



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding MACDONALD COMMERCIAL R.E.S. LTD

DECISION

Dispute Codes CNC, FF

Introduction

This hearing dealt with an application by the tenant pursuant to the *Residential Tenancy Act* ("the Act") for orders as follows:

- to cancel a 1 Month Notice to End Tenancy given for Cause ("1 Month Notice") pursuant to section 47 of the *Act*; and
- a return of the filing fee pursuant to section 72 of the *Act*.

Both the tenant and the landlord were present at the hearing. The landlord was represented by agents WR and RM at the hearing. All parties present were given a full opportunity to be heard, to present their sworn testimony and to make submissions of evidence under oath.

Based on the sworn testimony at the hearing, I accept that the landlord was properly served by the tenant with the Application for Dispute Resolution hearing package ("Application for Dispute") as per section 89 of the *Act* and that the tenant was properly served by the landlord with the 1 Month Notice and their evidentiary package pursuant to section 88 of the *Act*.

Issue(s) to be Decided

Can the tenant cancel the landlord's 1 Month Notice? If not, is the landlord entitled to an Order of Possession?

Is the tenant entitled to a return of the filing fee?

Background and Evidence

Testimony was provided by the landlord's agent, RM that this tenancy began on November 1, 2015. Rent is \$750.00 due on the first of the month. A security deposit of \$375.00 was paid at the outset of the tenancy and continues to be held by the landlord.

A pet damage deposit was not collected at the outset of the tenancy despite the presence of a pet. A second pet was brought onto the premises in the Fall of 2016.

The tenant testified that she had arranged with the apartment manager, BF that she would not have to pay a pet damage deposit and could instead perform work around the apartment building as a way to build equity in place of her paying a deposit. She stated that she would perform gardening, paint rental units and fences, and pressure wash balconies. The landlord disputed this notion and explained that BF himself had a pet in his rental unit and had paid a pet damage deposit. BF was not called as a witness and no evidence was submitted to the hearing pertaining to BF's involvement with this matter.

The landlords maintained that BF had explained to them that because the tenant was on social assistance at the time she entered into the tenancy agreement, she would be allowed to pay the pet damage deposit in installments. They said she failed to do so and this led to BF speaking to the tenant numerous times over the course of her tenancy.

On December 19th and 20th, 2016, the landlord wrote two demand letters to the tenant seeking payment of the \$375.00 due on November 1, 2015. These letters stated that failure to pay the pet damage deposit by December 29, 2016 would lead to the issuance of a 1 Month Notice to End Tenancy. The tenant stated that at no point did she ever refuse to pay the landlord the pet damage deposit, she just could not at the time that the demand letters were written, afford to come up with the money asked of her.

Analysis

The landlord issued a 1 Month Notice for failure to pay a pet damage deposit due on November 1, 2015.

Section 20(c) of the *Act* explains that:

A landlord must not do any of the following:

(c) require a pet damage deposit at any time other than

- (i) when the landlord and the tenant enter into the tenancy agreement, or
- (ii) if the tenant acquires a pet during a term of a tenancy agreement, when the landlord agrees that the tenant may keep the pet on the residential property.

The evidence in this case shows the landlord demanded payment of the pet security deposit on December 19th and 20th, 2016 for a tenancy agreement that began on November 1, 2015. This was long after the last date for collecting such a payment under paragraph 20(c)(i) of the *Act*. Although the landlord claimed to have requested payment at an earlier date, no written demand was made until December 19th and 20th, 2016. The tenant testified that she had made arrangements with BF, in lieu of payments. The landlords disputed this and stated that BF did not have this authority to make alternate arrangements for the pet damage deposit.

The evidence does not satisfy me on a balance of probabilities that the landlord's demand for a pet damage deposit was made in the time established by paragraph 20(c)(i) of the *Act*.

A pet damage deposit can be made pursuant to paragraph 20(c)(ii) of the *Act* which states that *if the tenant acquires a pet during a term of a tenancy agreement when the landlord agrees that the tenant may keep the pet on the residential property*. Testimony was provided by the tenant and the landlord that the landlord had written warning letters to the tenant pertaining to the behaviour of her animals. As the tenant acquired a second pet in the Fall of 2016, the landlord is conclusively presumed to have agreed that she may keep the pet as no action was taken to pursue a pet damage deposit until December 19, 2016.

The landlord's 1 Month Notice is dismissed and the tenancy shall continue until it is ended in accordance with the *Act*.

As the tenant was successful in her application and pursuant to section 72 of the *Act*, I order the tenant to recover the cost of the \$100.00 filing fee from the landlords. Using the offsetting provisions of section 72, the tenant may withhold \$100.00 from a future rent payment.

Conclusion

The tenant's application to cancel the landlord's 1 Month Notice is allowed. The 1 Month Notice is of no force or effect. This tenancy continues until ended in accordance with the *Act*.

I issue a monetary order of **\$100.00** in the tenant's favour, which allows the tenant to recoup the filing fee of this application. Should the landlord's fail to comply with this

Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court. The tenant may also choose to withhold \$100.00 from a future monthly rent payment in order to implement this monetary award.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: February 06, 2017

Residential Tenancy Branch