



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, FF

Introduction

This hearing was convened by way of conference call in response to the Tenant's Application for Dispute Resolution (the "Application") filed on February 28, 2017 to cancel a 1 Month Notice to End Tenancy for Cause (the "1 Month Notice") and to recover the filing fee from the Landlord.

The Tenant and the Landlord appeared for the hearing and provided affirmed testimony. The Landlord confirmed receipt of Tenant's Application by registered mail and the parties confirmed receipt of each other's documentary evidence served prior to the hearing.

The hearing process was explained to the parties and they had no questions about the proceedings. Both parties were given a full opportunity to present their evidence, make submissions to me, and cross examine the other party on the issues to be decided.

Issue(s) to be Decided

Should the 1 Month Notice be cancelled?

Background and Evidence

Both parties agreed that this tenancy started on October 1, 2013 on a month to month basis. The parties agreed that the signed tenancy agreement provided by the Landlord into evidence shows that the rent payable by the Tenant is \$900.00 on the first day of each month.

The Tenant testified that she was not in any rental arrears for this tenancy. The Landlord testified that the Tenant was because she had deducted \$100.00 from her March 2017 rent. The Tenant explained that she had deducted this amount because she had previously paid for a dispute resolution hearing fee that had been heard in

February 2017. The Landlord explained that he had served the Tenant with a notice to end tenancy for unpaid rent and that this matter was scheduled to be determined in a participatory hearing on April 24, 2017.

As a result, I informed the parties that the issue of alleged unpaid rent in this tenancy was not a matter before me and that would be determined in the April 24, 2017 hearing which the parties were still required to appear for.

The Tenant confirmed receipt of the 1 Month Notice dated February 25, 2017 which was posted to her door. The 1 Month Notice was provided into evidence and details a vacancy date of March 4, 2017. The reasons for ending the tenancy by the Landlord were:

- the Tenant has put the Landlord's property at significant risk;
- the Tenant has breached a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so was given to the Tenant; and,
- the Tenant has failed to pay a pet damage deposit within 30 days as required by the tenancy agreement.

The Landlord stated that the tenancy agreement provided by him into evidence does not allow the Tenant to have pets. The Landlord relies on section 17(b) of the signed tenancy agreement which states: *"Any addition to this tenancy agreement must comply with the Residential Tenancy Act and regulation, and must clearly communicate the rights and obligations under it. If a term does not meet these requirements, or is unconscionable, the term is not enforceable."*

The Landlord was of the opinion that this term was a material term that prevented the Tenant from having pets in this tenancy. The Landlord's interpretation of the tenancy agreement was that it did not provide for any addendum that the Tenant was allowed to have pets because the agreement indicated that there was no addendum attached to the tenancy agreement.

The Landlord testified that approximately two years ago, it came to his attention that the Tenant had a small dog in the rental unit. The Landlord testified that he verbally informed the Tenant that she was not allowed to have any pets. When the Landlord was asked why he had not taken any action to deal with this matter, the Landlord explained that he was too busy to deal with the matter at the time but had issued the Tenant with a breach letter at the start of February 2017.

The Landlord testified that approximately six months ago, it came to his attention that the Tenant had got cats. The Landlord testified that he was unable to deal with the issue at the time because he did not have the Tenant's phone number and was again busy.

The Landlord confirmed he did not request the Tenant to pay a pet damage deposit as he was not aware that a pet damage deposit could be requested because he had already taken a security deposit from the Tenant.

The Landlord was asked about how the Tenant had put his property at significant risk. The Landlord explained that the Tenant's pets had caused significant damage to the rental unit, including damage to the carpet, and they were defecating in the yard. The Landlord said that he had evidence of this but had not provided this for the hearing.

The Landlord continued to testify that the Tenant had bullied him by sending him harassing emails. The Landlord confirmed that he had also not provided any evidence of this for the hearing.

The Tenant disputed the Landlord's testimony. The Tenant explained that at the start of the tenancy she had two cats which the Landlord and his agent had verbally agreed to. The Tenant confirmed that she had not signed anything in the tenancy agreement that prohibited her from having pets. The Tenant stated that two years ago she got a dog and discussed this with the Landlord who gave her permission to have the dog. The Tenant confirmed that the Landlord had not requested a pet damage deposit and neither did she pay one.

The Tenant pointed me to a document the Landlord had served to her with the 1 Month Notice which she provided into evidence. The document purports to be a one page tenancy agreement with point number 4 showing no pets allowed. The Tenant testified that the document is fraudulent as the Tenant did not sign it and it contains a date of February 1, 2005 which was a date before the tenancy started. The Tenant submitted that the Landlord had forged her signature to make out the Tenant had signed it thereby trying to make this appear as a pets clause.

The Landlord was unable to explain the origins of the above document and how the Tenant's signature came to be on it. The Landlord acknowledged that the date and signature were inconsistent with this tenancy and stated that he was not relying on this document as evidence for this hearing even though the Tenant had provided it. The Landlord stated that he had served this to the Tenant as a way to get a reaction out of her for this dispute.

Analysis

In relation to the form and content of the 1 Month Notice, I find it complied with the requirements of Section 52 of the *Residential Tenancy Act* (the “Act”) and that it was served to the Tenant pursuant to Section 88(g) of the Act on February 28, 2017. Accordingly, I find the Tenant applied to dispute the 1 Month Notice within the ten day time limit stipulated by Section 47(4) of the Act.

When a landlord issues a tenant with a 1 Month Notice and it is then subsequently disputed, the landlord bears the burden for proving the reasons on the balance of probabilities.

I first turn my mind to the reason that the Tenant has put the Landlord’s property at significant risk. In this case, the Landlord relies on his oral evidence to suggest that the Tenant’s pets have caused significant damage to the rental unit and that the Tenant has sent harassing emails to him which constitutes bullying.

The Landlord failed to provide supporting or corroborative evidence, such as photographs of damage or harassing emails, which would allow me to conclude that the Tenant has put the rental unit at significant risk. I find the Landlord’s disputed oral evidence is not sufficient for me to end the tenancy for this reason.

With respect to the Landlord’s reason to end the tenancy for a breach of a material term of the tenancy agreement, I make the following findings. Section 18(1) of the Act states:

18 (1) *A tenancy agreement may include terms or conditions doing either or both of the following:*

(a) prohibiting pets, or restricting the size, kind or number of pets a tenant may keep on the residential property;

(b) governing a tenant's obligations in respect of keeping a pet on the residential property.

[Reproduced as written]

In proving this reason on the 1 Month Notice, a landlord must prove that a material term actually existed in a tenancy agreement. Therefore, I first consider the disputed one page tenancy agreement provided by the Tenant into evidence which was served by the Landlord to the Tenant with the 1 Month Notice. I find this to be an unreliable document as the Landlord acknowledged that it contains information that is incorrect and was only served to the Tenant as a way to elicit a response from her. The Landlord was unable to

explain how the Tenant's signature got onto the document and why it was dated way before the tenancy started. As a result, I find this evidence undermines the Landlord's credibility.

Next, I turn to the undisputed tenancy agreement which was signed by the parties. There is nothing in that tenancy agreement that indicates that the Tenant was prohibited from having pets. Section 4B of that agreement does not show that it is not applicable and the agreement contains no addendums that detail any prohibition, restrictions, or consequences for having pets that would then allow me to make findings on whether they were material to the tenancy. Therefore, I find that as the tenancy agreement was silent on pets, there was no material term recorded in writing.

Furthermore, I do not accept the Landlord was too busy to deal with the alleged breach of the Tenant having pets in this tenancy because if this was so important to the Landlord, he would have taken more diligent action and exercised his remedy under the Act to deal with the issue at that time.

I find the lack of action on behalf of the Landlord two years ago and after he realised the Tenant had more pets six months ago, convinces me that the Landlord's lack of action constitutes waiver of the Landlord's right to terminate the tenancy for that breach.

With respect to the reason that the Tenant has not paid a pet damage deposit within 30 days, I find the Landlord provided insufficient evidence that this was requested from the Tenant when he became aware that the Tenant had pets approximately two years ago. The Tenant rebutted the Landlord's evidence stating that the Landlord had given oral consent to this. I find this submission to be more plausible because it is more consistent with the lack of action taken by the Landlord. Therefore, I find this reason is unproven.

Based on the foregoing, I find the Landlord has failed to provide sufficient evidence to prove the 1 Month Notice. Therefore, I grant the Tenant's request to cancel it and the tenancy will continue until it is ended in accordance with the Act.

As the Tenant had been successful in cancelling the 1 Month Notice, I grant the Tenant the \$100.00 filing fee paid to make this Application. Pursuant to Section 72(2) (a) of the Act, the Tenant may obtain this relief by deducting \$100.00 from April 2017 rent. The Tenant should provide the Landlord a copy of this Decision when making the reduced rent payment for that month.

Conclusion

The 1 Month Notice dated February 25, 2017 is cancelled. The tenancy will continue until it is ended in accordance with the Act. The Tenant may recover her filing fee from April 2017 rent.

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

Dated: March 31, 2017

Residential Tenancy Branch