



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MT, CNC, DRI, AS, OLC

Introduction

This hearing was convened by way of conference call concerning an application made by the tenant seeking more time than prescribed to dispute a notice to end the tenancy; for an order cancelling a notice to end the tenancy for cause; disputing a rent increase; for an order permitting the tenant to assign or sublet because the landlord's consent has been unreasonably withheld; and for an order that the landlord comply with the *Act*, regulation or tenancy agreement.

The landlord and the tenant attended the hearing, and each gave affirmed testimony. The parties were also given the opportunity to question each other and make closing submissions.

During the course of the hearing the landlord advised that the tenant has not provided any evidence to the landlord. The tenant has provided evidentiary material to the Residential Tenancy Branch, however any evidence that a party wishes me to consider must also be provided to the other party in accordance with the Rules of Procedure. The tenant did not dispute that the evidence was not provided to the landlord, but testified that he felt it necessary to respond to the landlord's evidentiary material. Since the tenant has not complied with the Rules of Procedure, I decline to consider any of that evidence.

All other evidence has been reviewed and is considered in this Decision.

Issue(s) to be Decided

- Should the tenant be permitted more time than prescribed to dispute a notice to end the tenancy given by the landlord?
- Has the landlord established that the One Month Notice to End Tenancy for Cause was issued in accordance with the *Residential Tenancy Act*?
- Has the tenant established that rent has been increased contrary to the *Act* or the regulations?

- Has the tenant established that the landlord has unreasonably withheld consent to assign or sublet?
- Has the tenant established that the landlord should be ordered to comply with the *Act*, regulation or tenancy agreement?

Background and Evidence

The landlord testified that the tenant moved into the rental unit on January 16, 2017, paid a pro-rated amount of rent to the end of January, and the fixed term tenancy began on February 1, 2017. A copy of the tenancy agreement has been provided naming the tenant and another person as tenant, which states that the term of the tenancy is for not less than 6 months. The landlord testified that the fixed term expires on July 31, 2017 and then reverts to a month-to-month tenancy. The tenant still resides in the rental unit, but the other named tenant did not move in, but is a co-signer only as required by the landlord's head office because of the tenant's low income.

Rent in the amount of \$935.00 per month is payable on the 1st day of each month and there are no rental arrears. At the outset of the tenancy the landlord collected a security deposit from the tenant in the amount of \$467.50 as well as a pet damage deposit in the amount of \$200.00, both of which are still held in trust by the landlord. The rental unit is a 2-bedroom apartment within an apartment complex.

On March 31, 2017 the landlord served the tenant with a One Month Notice to End Tenancy for Cause by personally hand-delivering it to the tenant. A copy has been provided for this hearing and it is dated March 31, 2017 and contains an effective date of vacancy of April 30, 2017. The reason for issuing it states: "Breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so."

The landlord further testified that she entered the apartment building and noticed a strong smell in the lobby and knocked on all tenants' doors on the first floor in that section and was granted access to each suite; even those that didn't have a pet, to show that the odor was not coming from their suite. There was no strong smell in any other unit, however the tenant didn't answer the door and may not have been there so the landlord had no access. After the process of elimination the landlord spoke to the tenant who denied that the smell was coming from his apartment. The landlord explained that there was no odor from any other apartment, and gave a written warning to the tenant entitled "First Warning." A copy has been provided, addressed to both tenants named on the tenancy agreement, and is dated January 24, 2017.

The following day, the landlord received a complaint letter from another tenant, a copy of which has been provided, but the landlord felt she had already dealt with it. The complaint letter is dated January 25, 2017 and states that the very strong smell of cat urine in the hallway is horrible, takes the writer's breath away and affects the writer's breathing.

In February, 2017 the landlord went to the tenant's rental unit to follow-up on a noise complaint, but didn't hear any noise. The landlord knocked on the tenant's door and there was a strong smell of cat odor. The landlord told the tenant it's a health issue and needs to stop. The landlord received another written complaint from a neighbouring tenant and a copy has been provided for this hearing. It is dated February 21, 2017 and states: "The odor of cat urine and dope are driving me out of my mind!" The landlord gave the tenant a breach letter, a copy of which has been provided for this hearing. It is dated February 20, 2017 and states that the landlord received a formal complaint from neighbours regarding the strong smell of cat urine coming from the tenant's apartment, and reminds the tenant of the Pet Agreement which forms part of the tenancy agreement, and asks that the tenant be considerate to neighbours. The landlord received another complaint from a neighbouring tenant dated February 26, 2017 but felt that she had dealt with it and wanted to give the tenant time to correct the issue. However, it has been an on-going problem.

On March 30, 2017 the landlord gave a final breach letter. A copy of that has also been provided. It states that another complaint regarding the strong odor of cat urine has been received, and states that the landlord will continue to monitor the situation, and should the practice continue, the tenant would be asked to find a new home for the cats or the landlord will have no choice but to give an eviction notice.

The landlord further testified that the tenant has 2 grown cats, which is the maximum number allowed in the Pet Agreement but on March 31, 2017 the landlord saw a kitten in the window of the rental unit. The landlord asked the tenant, who denied it at first and then confirmed it. The landlord told the tenant she would return with another breach letter and a notice to end the tenancy.

The landlord did a suite inspection on April 9, 2017 to confirm the kittens were gone, and they were, but there was still a strong smell of cats in the apartment. Another breach letter was given asking that the tenant remove the pets due to the continued smell. The tenant didn't know how to deal with the smell, so the landlord revoked the pet privileges.

The landlord also testified that there has not been a rent increase at all, and a copy of a tenant's ledger has been provided.

The landlord also pointed out that the tenant has applied late to cancel the notice to end the tenancy. The tenant's application was filed on April 13, 2017 and the One Month Notice to End Tenancy for Cause was served on March 31, 2017. Further, on May 1, 2017 the landlord was hand-delivered the tenant's hearing package.

With respect to the tenant's application for an order permitting the tenant to assign or sub-let, the tenancy agreement states that no subletting is permitted without the prior written consent of the landlord, and the landlord suggests the tenant is referring to another co-signer. The current co-signer no longer wants to be named on the lease.

The tenant testified that he was confused about why the One Month Notice to End Tenancy for Cause was issued. The parties had discussed the co-signer and the landlord told the tenant that the rental unit had to be inspected and a new tenancy agreement signed with a new co-signer.

The tenant rectified the issue of the cat odor by putting a seal under the door. Complaints about it were in January and February, and the tenant never heard anything for several months until the end of March when the landlord entered the tenant's rental unit. After the notice to end the tenancy was issued, the landlord gave the tenant another letter, and was convinced that the tenant didn't have any kittens, but the odor was in the suite, not in the hallway. It was almost half way through April by then, and the tenant believed the landlord was going to get back to the tenant with a new tenancy agreement. The landlord had shown the tenant an email from the co-signer saying she didn't want her name on the lease, and the landlord said she wanted to do a suite inspection before signing a new tenancy agreement with another co-signer. The landlord didn't respond to the text messages for a week, and the tenant was confused by that. If the landlord was going to sign a new tenancy agreement, the tenant believed the notice to end the tenancy had been cancelled by the landlord.

The tenant does not seek an order to sublet or assign, but since the six month lease has almost expired, the tenant doesn't need a co-signer and wants the tenancy to revert to a month-to-month tenancy.

Analysis

Firstly, the *Residential Tenancy Act*, and the One Month Notice to End Tenancy for Cause clearly state that the tenant has 10 days to dispute the notice. If the tenant fails to do so, the tenant is conclusively presumed to have accepted the end of the tenancy. The tenant in this case testified that he believed it had been cancelled by the landlord since the landlord discussed entering into a new tenancy agreement with a new co-signer.

Where a tenant disputes a notice to end a tenancy given by a landlord the onus is on the landlord to establish that it was given in accordance with the *Residential Tenancy Act*, which can include the reason(s) for issuing it. In this case, the reason for issuing it is in dispute, as well as the tenant's testimony that he believed the landlord had in effect withdrawn it.

The landlord made it clear in her testimony and closing submissions that the reason for ending the tenancy had nothing to do with the co-signer but was about the cat odor, and that's clearly set out in the breach letters and in the One Month Notice to End Tenancy for Cause. I accept the testimony of the tenant that he didn't hear anything about the cat odor from sometime in January or February until receiving the notice to end the tenancy at the end of March, 2017, and therefore believed the issue was corrected. I also accept the undisputed testimony of the tenant that the parties had spoken about a new lease and a new co-signer. However, a notice to end a tenancy given by either party cannot be withdrawn without the written consent of the other party. The landlord did not give the tenant anything in writing to confirm that the notice was cancelled and the parties did not enter into a new tenancy agreement. Therefore, I cannot consider that the tenant should be granted more time than prescribed to dispute the notice.

Considering the complaint letters from other tenants and breach letters from the landlord, I find that the unpleasant smell caused by the tenant's pets were contrary to the Pet Agreement, and a material term of the tenancy agreement. I also find that the landlord had cause to issue the notice, that the tenant has breached a material term of the tenancy agreement and did not correct it within a reasonable time after written notice to do so.

The tenant did not lead any evidence respecting a rent increase or a request to sublet or assign.

In the circumstances, I find that:

- the tenant did not dispute the One Month Notice to End Tenancy for Cause within the time prescribed;
- did not serve the landlord with the hearing package within 3 days as required;
- the landlord has proven that the notice was issued in accordance with the *Act*;
- there is no evidence of an improper rent increase or withholding of the landlord's consent to assign or sublet.

The tenant's applications in those respects are dismissed.

The *Residential Tenancy Act* states that where I dismiss a tenant's application to cancel a notice to end a tenancy given by a landlord, I must grant an Order of Possession in favour of the landlord, so long as the notice given is in the approved form. I have reviewed the One Month Notice to End Tenancy for Cause and I find that it is in the approved form and contains information required by the *Act*, and therefore, I grant an Order of Possession in favour of the landlord. Since the effective date of vacancy has passed, I grant the Order of Possession on 2 days notice to the tenant.

Since the tenancy is ending, I dismiss the tenant's application for an order that the landlord comply with the *Act*, regulation or tenancy agreement.

Conclusion

For the reasons set out above, the tenant's application is hereby dismissed in its entirety without leave to reapply.

I hereby grant an Order of Possession in favour of the landlord effective on 2 days notice to the tenant.

This order is final and binding and may be enforced.

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: May 24, 2017

Residential Tenancy Branch