Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding AUSTEVILLE PROPERTIES
[Tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC FF

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- cancellation of the landlord's 1 Month Notice to End Tenancy for Cause (the 1 Month Notice) pursuant to section 47, and
- authorization to recover the filing fee for this application from the landlord pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another. The landlord's agent, KP, ('landlord) testified on behalf of the landlord in this hearing, and was given full authority by the landlord to do so.

The landlord confirmed receipt of the tenant's application for dispute resolution hearing package ("Application"). In accordance with section 89 of the *Act*, I find the landlord duly served with the tenant's Application. Both parties confirmed receipt of each other's evidentiary materials, which were duly served in accordance with section 88 of the *Act*.

The tenant acknowledged receipt of the 1 Month Notice to End Tenancy for Cause, with an effective date of June 30, 2017(the 1 Month Notice), on May 26, 2017. Accordingly, I find that the 1 Month Notice was served to the tenant in accordance with section 88 of the *Act*.

Issue(s) to be Decided

Should the landlord's 1 Month Notice be cancelled?
If not, is the landlord entitled to an Order of Possession?
Is the tenant entitled to recover the filing fee for this application from the landlord?

Background and Evidence

This month-to-month tenancy began on April 18, 2015, with monthly rent currently set at $1,670.00, payable on the first of each month. The landlord collected, and still holds, a security deposit in the amount of $797.50. The tenant currently still resides in the suite.

The landlord served the notice to end tenancy providing the following grounds:

"*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's agent, KP, testified that on May 7, 2017, the tenant had breached a material term of the tenancy agreement by allowing a dog inside the building. The incident took place around 7:15 p.m., when the dog lurched at several tenants in the lobby, and another tenant inside the elevator. The landlord submitted 5 colour photos in their evidence which documented this incident.

The landlord's agent testified that this was the second incident involving the same breach, the first which took place in April of 2016, when the tenant had kept a pet bird in his unit, which the tenant removed after receiving a warning sent by the landlord. The landlord included copies of the emails sent to the tenant regarding the incident, including an email dated April 19, 2016 which stated "I have been advised by head office you are required by the conditions of your lease. We trust you will find a home for the bird. Failure to abide by the terms of your lease within 72 hours may result in eviction proceedings". The tenant replied on the same date that he was "not aware that a caged bird was considered a pet under the strata rules".

The landlord's agent testified that the tenant was aware of the no pet clause, and included in evidence a copy of the tenancy agreement, as well as the resident handbook which is given to all tenants. The handbook has a section that states "Pets are not permitted in the building at any time, either by Residents, or visitors. The "no pets" policy will be strictly enforced in accordance with your Residential Tenancy Agreement". In combination with the previous incident involving the bird, the landlord's agent testified that the tenant was well aware of the building's policy, and that another incident involving a breach of this clause could mean the end of this tenancy. The landlord's agent further testified that regular memos were sent to communicate to tenants that the building's policy would be strictly enforced. The landlord's agent emphasized that the no pet policy was considered an important part of the tenancy agreement and rules for the building as many residents reside in the building with the assurance that no pets were allowed due to allergy issues, or similar issues involving pets. The landlord is seeking an Order of Possession for July 31, 2017 as the tenant had paid rent for July 2017.

The tenant did not dispute that the May 7, 2017 incident took place, but testified that he was unaware that the policy applied to pets outside his own unit. He testified that the incident was only a 5 minute visit by a friend, and he was not aware that he was breaching any terms of the tenancy agreement. He testified that he had remedied the April 2016 incident by removing the

bird within 48 hours of being warned by the landlord, which he argued had taken place over a year ago.

Analysis

Section 47(1) of the *Act* allows a landlord to end a tenancy for cause for any of the reasons cited in the landlord's 1 Month Notice.

A party may end a tenancy for the breach of a material term of the tenancy but the standard of proof is high. To determine the materiality of a term, an Arbitrator will focus upon the importance of the term in the overall scheme of the Agreement, as opposed to the consequences of the breach. It falls to the person relying on the term, in this case the landlord, to present evidence and argument supporting the proposition that the term was a material term. As noted in RTB Policy Guideline #8, a material term is a term that the parties both agree is so important that the most trivial breach of that term gives the other party the right to end the Agreement. The question of whether or not a term is material and goes to the root of the contract must be determined in every case in respect of the facts and circumstances surrounding the creation of the Agreement in question. It is entirely possible that the same term may be material in one agreement and not material in another. Simply because the parties have stated in the agreement that one or more terms are material is not decisive. The Arbitrator will look at the true intention of the parties in determining whether or not the clause is material.

Policy Guideline #8 reads in part as follows:

> *To end a tenancy agreement for breach of a material term the party alleging a breach…must inform the other party in writing:*
> - *that there is a problem;*
> - *that they believe the problem is a breach of a material term of the tenancy agreement;*
> - *that the problem must be fixed by a deadline included in the letter, and that the deadline be reasonable; and*
> - *that if the problem is not fixed by the deadline, the party will end the tenancy…*

In regards to the landlord's allegation that there has been a breach of a material term of the tenancy agreement, I find that it is undisputed that the tenant had allowed a dog inside the building. The tenant, however, disputes the fact that he was given the opportunity to remedy the breach as he was unaware that this incident was considered a breach of the tenancy agreement and rules.

I am not satisfied that the landlord provided the tenant with an opportunity to correct the breach. The *Act* requires that the landlord give written notice to the tenant that this breach could result in the end of this tenancy, and the tenant had not received any communication from the landlord in regards to the recent incident. I find that the written warning given to the tenant in 2016 does not satisfy the requirements of section 47(1)(h) whereby the landlord is required to give written

notice for the tenant to correct the situation. The situation in April 2016 involved a different kind of pet and considerably different circumstances than this May 2017 incident. In the original case, the tenant was keeping a pet bird in the premises; in this case, a person visiting the tenant brought a dog onto the rental property. On this basis, I find that the landlord has not met their burden of proof to show that 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.

For the reasons cited above, I find that the landlord has failed to demonstrate to the extent required that the tenant has contravened section 47 of the *Act*, and accordingly I am allowing the tenant's application for cancellation of the 1 Month Notice. The tenancy will continue as per the current tenancy agreement.

I find that the tenant is entitled to recover the filing fee for this application.

Conclusion

The landlord's 1 Month Notice to End the Tenancy is cancelled and of no continuing force, with the effect that this tenancy continues until ended in accordance with the *Act*.

I allow the tenant to implement a monetary award of $100.00, by reducing a future monthly rent payment by that amount. In the event that this is not a feasible way to implement this award, the tenant is provided with a Monetary Order in the amount of $100.00, and the landlord must be served with **this Order** as soon as possible. Should the landlords 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.

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: July 10, 2017

Residential Tenancy Branch