



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding MOLE HILL COMMUNITY HOUSING SOCIETY
and [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
- recovery of the filing fees of this application from the landlords pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses. The personal landlord QW (the "landlord") primarily spoke for both himself and the corporate landlord. The tenant primarily represented himself with the assistance of his advocate DK.

As both parties were in attendance I confirmed that there were no issues with service of the landlord's 1 Month Notice, the tenant's application for dispute resolution or either party's evidentiary materials. The tenant confirmed receipt of the landlord's materials. I find that the tenant was served with the landlord's 1 Month Notice and evidence in accordance with sections 88 and 89 of the Act. The landlord confirmed receipt of the tenant's application for dispute resolution but disputed receiving the tenant's evidence. I find that the landlord was served with the tenant's application in accordance with section 89 of the Act.

The tenant testified that the evidence package was sent to the landlord by registered mail but was unable to provide a Canada Post tracking number during the hearing. As the landlord stated that they had not received the tenant's written evidence, I advised the parties that I would only be able to consider those pieces of evidence included in the tenant's materials which the landlord confirmed having received on prior occasions. I

have taken this approach after considering the guidance provided by Rule 3.17 of the Rules of Procedure.

Issue(s) to be Decided

Should the 1 Month Notice be cancelled? If not are the landlords entitled to an Order of Possession?

Is the tenant entitled to recover the filing fee for this application from the landlords?

Background and Evidence

The parties agreed on the following facts. This tenancy began in December, 2003. The current monthly rent is \$642.00. A security deposit of \$327.00 was paid by the tenant at the start of the tenancy and is still held by the landlords. The tenant paid a pet damage deposit of \$327.00 in 2008 when he acquired a dog and that is still held by the landlords.

The tenancy agreement and the addendum provide that an occupant may only keep one dog and that no unregistered pets are permitted on the premises. The addendum further states that the residential tenancy may be ended if the occupant is in breach of the rules.

The parties testified that in early 2017 the tenant began housing and caring for two additional dogs in addition to his own. The tenant testified that this was to be a temporary situation while another resident of the rental building, the owner of the two dogs was hospitalized.

The landlord issued a letter to the tenant dated May 1, 2017 stating that the tenant was in violation of the rules of the tenancy and that the situation must be corrected by May 15, 2017.

The tenant issued a letter in response to the landlord dated May 13, 2017 in which the tenant states that he was minding the dogs only on a temporary basis.

The landlord testified that based on the phrasing used in the tenant's May 13, 2017 letter he believes that the tenant intended to continue housing the two additional dogs in defiance of the tenancy rules. The landlord testified that he believes he has seen the dogs around the rental building recently. The landlord said that he does not have conclusive information on whether the dogs continue to reside with the tenant.

The tenant testified that he made arrangements for the two dogs he was minding to be housed outside of the rental unit on or about May 10, 2017. The tenant testified that since the dogs have moved out of the rental unit he has had no contact with them.

Analysis

Section 46 of the *Act* provides that upon receipt of a notice to end tenancy for cause, the tenant may, within ten days, dispute the notice by filing an application for dispute resolution with the Residential Tenancy Branch. If the tenant files an application to dispute the notice, the landlord bears the burden to prove, on a balance of probabilities, the grounds for the 1 Month Notice.

The landlord must show on a balance of probabilities, which is to say it is more likely than not, that the tenancy should be ended for the reasons identified in the 1 Month Notice. In the matter at hand the landlord must demonstrate that there is a breach of a material term of the tenancy that was not corrected within a reasonable period of time after written notice was issued.

I find, on a balance of probabilities, that the landlord has not established cause for ending this tenancy. I accept that there was a breach of the tenancy agreement addendum which gave rise to the written notice of May 1, 2017 from the landlord. I find there is insufficient evidence to show that the breach was not corrected after the tenant received the landlord's letter. The landlord submitted into written evidence the tenant's letter dated May 13, 2017 as evidence that the tenant intended to defy the tenancy rules. I find it to be insufficient to conclude that the tenant did not rectify the situation within the timeframe provided by the landlord. While the tone of the correspondence may not have been to the landlord's liking, I find that it is not sufficient evidence to show that the tenant did not comply with the landlord's demands.

I accept the tenant's sworn testimony that the two dogs he was caring for after their owner passed away were found a home outside of the rental unit. I accept the tenant's evidence that the tenant complied with the landlord's request to correct the situation by May 15, 2017.

I do not find that there is sufficient evidence to support the landlord's position that the tenancy agreement has been breached and not corrected within a reasonable amount of time. Consequently, I allow the tenant's application and dismiss the 1 Month Notice.

As the tenant's application was successful, the tenant is entitled to recover the \$100.00 filing fee for this application.

Conclusion

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

As the tenant's application was successful, the tenant is entitled to recovery of the \$100.00 filing fee for the cost of this application. As this tenancy is continuing, I allow the tenant to recover his \$100.00 filing fee by reducing his monthly rent by that amount on his next monthly rental payment to the landlord. In the event that this is not feasible, I issue a monetary Order in the tenant's favour in the amount of \$100.00.

The tenant is provided with these Orders in the above terms and the landlord must be served with this Order as soon as possible. Should the landlord fail to comply with these Orders, these Orders may be filed in the Small Claims Division of the Provincial Court and enforced as Orders 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 13, 2017

Residential Tenancy Branch