



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Singla Bros Holding Ltd.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC

Introduction

This hearing was convened by way of conference call concerning an application made by the tenant seeking an order cancelling a notice to end the tenancy for cause.

The tenant and an agent for the landlord attended the hearing as well as a witness for the landlord, all of whom gave affirmed testimony. The parties were given the opportunity to question each other and the witness. No issues with respect to service or delivery of documents or evidence were raised.

Issue(s) to be Decided

Has the landlord established that the One Month Notice to End Tenancy for Cause was issued in accordance with the *Residential Tenancy Act*?

Background and Evidence

The landlord's agent testified that this fixed term tenancy began on September 19, 2016 and expires on September 30, 2017, and the tenant still resides in the rental unit. Rent in the amount of \$1,590.00 per month is payable on the 1st day of each month. The tenant is in arrears of rent the sum of \$590.00 for this month.

At the outset of the tenancy the landlord collected a security deposit from the tenant in the amount of \$795.00 which is still held in trust by the landlord. The rental unit is a townhouse, and a copy of the tenancy agreement has been provided as evidence for this hearing.

The landlord's agent further testified that on May 16, 2017 landlord served the tenant with a One Month Notice to End Tenancy for Cause by posting it to the door of the

rental unit. A copy has been provided and it is dated May 16, 2017 and contains an effective date of vacancy of June 30, 2017. The reasons for issuing it state:

- Breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.
- Non-compliance with an order under the legislation within 30 days after the tenant received the order or the date in the order.

The landlord's agents have had numerous complaints about the tenant's dog being in the rental unit and defecating on the balcony. The tenant has told the landlord's agents that it belongs to the tenant's boyfriend, but the dog is there basically every day and at least since February when the landlord's agent told the tenant she would have to get rid of it, but's still there. On May 15, 2017 the landlord provided the tenant with a letter about the breach and a copy has been provided for this hearing. It is dated May 15, 2017 and states the landlord has consistent complaints from the rental unit regarding noise, unsupervised children, parking, dog feces and urine and a new roommate. It also sets out breaches of several conditions of the tenancy agreement:

- Section 4 Payment of rent (inconsistent)
- Section 7 Additional occupants (must have landlord's consent)
- Section 11 Conduct (noise)
- Section 12 Pets (not allowed)
- Section 14 Children (must not play on fences, unsupervised)
- Section 15 Vehicles (violations ie; parking in fire lane, parking in other's stalls, unlicensed vehicle in parking stall)

It also states that the landlord is issuing a 30 Day Notice to vacate and the tenant must move out by June 30, 2017.

The landlord's agent does not know why the second reason was checked off on the notice.

In the event that an Order of Possession is granted in favour of the landlord, the landlord would be content with an effective date of vacancy of August 31, 2017 to give the tenant more time to find suitable accommodation.

The landlord's witness testified that she is the property manager and lives in the complex.

Text messages have been exchanged between the witness and the tenant about having a dog, and the tenant said it was her boyfriend's dog. That is a material term of the

tenancy agreement, which clearly states, “No Pets Allowed.” Other than text messages, the parties have spoken about the dog, and the landlord gave the tenant a letter dated May 15, 2017 about breaches.

There’s a lot of tension in that part of the complex that the tenant isn’t aware of. Neighbours complain to the witness when she sees them.

With respect to the second reason for issuing the One Month Notice to End Tenancy for Cause, the witness testified that she believes it might be a mistake. However, the witness believes the tenant has a Jeep that is uninsured and currently has 2 flat tires.

The tenant testified that the husband of the landlord’s property manager is the maintenance man for the rental complex and he doesn’t like the tenant. He also yells at the kids, is rude and tries to get people going. He makes the tenant cry, and her boyfriend talked to him.

Someone called Social Services advising that the tenant wouldn’t be living in the rental unit after June 30, 2017 so the rent cheque from the Ministry was withheld. The tenant paid what she could out of other funds, and the Ministry will be sending it now that it’s been corrected.

The tenant also testified that there are pets all over the complex, and a lot of kids. The tenant doesn’t believe the landlord’s agents know whose kids are whose.

The tenant has never been told about complaint letters, and the letter of May 15, 2017 doesn’t say what the complaints are.

The dog belongs to the tenant’s boyfriend who lives with his parents. If the landlord wants a pet damage deposit for the dog, the tenant would pay one.

The tenant was given a parking spot which is where the Jeep is.

Analysis

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, neither the landlord nor the property manager was able to lead any evidence with respect to the second reason checked off in the notice:

- Non-compliance with an order under the legislation within 30 days after the tenant received the order or the date in the order.

With respect to the first reason for issuing it:

- Breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so,

the onus is on the landlord to establish that the tenant was given written notice and that the tenant was given a reasonable time after that written notice to correct the breach. The landlord didn't do so, but served the notice to end the tenancy the day after written notice to correct the breach.

Therefore, I cancel the notice.

Conclusion

For the reasons set out above, the One Month Notice to End Tenancy for Cause dated May 16, 2017 is hereby cancelled.

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 18, 2017

Residential Tenancy Branch