



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding AMBASSADOR INDUSTRIES LTD
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC, OLC, LRE, LAT

Introduction

This hearing dealt with the tenants' application under 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;
- An Order that the landlord comply with the Act, regulations or tenancy agreement pursuant to section 62; and
- an order to suspend or set conditions on the landlord's right to enter the rental unit pursuant to section 70.

Both parties attended the hearing and were given a full opportunity to be heard, to present affirmed testimony, to make submissions, to call witnesses and cross-examine one another. The corporate landlord was represented by its agent CG (the "landlord").

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 parties confirmed receipt of one another's materials. In accordance with sections 88 and 89 of the *Act*, I find that the tenant was duly served with the landlord's 1 Month Notice, the landlord with the tenant's application for dispute resolution and both parties with their respective evidence.

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?

Should the landlord be ordered to comply with the Act, regulations or tenancy agreement? Should conditions be set restricting the landlord's right to enter the rental unit?

Background and Evidence

The parties agreed on the following facts. This fixed term tenancy began in March, 2017. The monthly rent is \$1,200.00. A security deposit of \$600.00 was paid by the tenant at the start of the tenancy and is still held by the landlord. A copy of the signed tenancy agreement was submitted into written evidence by the landlord.

The tenancy agreement provides that no pets are allowed. The landlord testified that the tenant has been seen with a cat in his rental unit. The landlord said that he informed the tenant verbally that having a pet would be a breach of the tenancy agreement and sent a written letter on June 26, 2017 confirming the discussion. The landlord said that subsequently a cat has been seen by both the landlord and other tenants in or around the rental unit. The landlord issued a second letter to the tenant dated July 23, 2017 advising the tenant "NO CATS IN THE BUILDING PERIOD".

The tenant testified that he has given his cat to a neighbor after receiving the initial warning from the landlord. The tenant said that the cat often comes around for visits on the patio as his suite is located on the first floor. The tenant said that he does not feed or care for the cat on a regular basis.

The tenant said that the landlord issues notices which are placed in his mailbox. The tenant said that this means the landlord has access to the mailboxes and could be going through other correspondences. The tenant said that he wishes the landlord to stop accessing the mailbox to issue notices and send correspondence through the Canada Post system.

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 the tenant breached a material term of the tenancy agreement. Residential Tenancy Policy Guideline 8 defines a material term as term of an agreement that is so important that the most trivial breach of that term gives the other party the right to end the agreement. Whether a term in an agreement is material is determined by the facts and circumstances of the tenancy agreement. To end a tenancy for a breach of a material term the party alleging the breach must inform the other party in writing that there is problem believed to be a material breach, that the problem must be fixed by a reasonable deadline, and if the problem is not fixed the party will end the tenancy.

I find that a prohibition on pets in a rental unit to be a material term of this tenancy agreement. I accept the undisputed evidence of the parties that the term was contained in the tenancy agreement signed by the parties. I accept the parties' evidence that some residents of the rental building have pets but I find that the tenancy agreement for this rental unit is clear in prohibiting pets. I accept the landlord's evidence that the landlord informed the tenant verbally and confirmed by letter dated June 26, 2017 that there was a problem which must be fixed.

I find there is insufficient evidence that the breach has not been corrected by the tenant. While I accept the landlord's evidence that a cat has been seen around the rental unit, I find there is insufficient evidence that the tenant remains the owner. The tenant testified that the cat was given to a neighbor and the cat makes its way back to the rental unit on its own. I find that the landlord's sighting of the cat around the rental unit to be insufficient evidence that the tenant is still the primary owner of a pet in contravention of a material term of the tenancy. Consequently, I allow the tenant's application to cancel the 1 Month Notice. The Notice is of no force or effect.

I find that the tenant has provided insufficient evidence in support of his application that the landlord comply with the Act, regulations or tenancy agreement and that the landlord's right to access the rental unit be restricted. I find the tenant's accusations to be neither persuasive nor supported by evidence. As a result, I dismiss this portion of the tenant's application.

Conclusion

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

The remaining portion of the tenant's application is dismissed.

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: September 13, 2017

Residential Tenancy Branch