



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPB/OPC, CNC, FF

Introduction

This hearing dealt with applications from both the landlords and the tenants under the *Residential Tenancy Act* ("the Act"). The landlords applied for an Order of Possession for Breach of a Material Term pursuant to section 55. The tenants applied for: cancellation of the landlord's 1 Month Notice to End Tenancy for Cause ("1 Month Notice") pursuant to section 47; and authorization to recover the filing fee for 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 their sworn testimony, and to make submissions. The landlords' lawyer (agent) also attended the hearing. The landlords also attended 30 minutes after the start of the hearing. The teleconference continued for an additional 21 minutes after the landlords joined the line. Both parties confirmed receipt of the other's Application for Dispute Resolution with documentary evidence for this hearing.

Issue(s) to be Decided

Should the landlord's 1 Month Notice be cancelled or is the landlord entitled to an Order of Possession for Cause (including breach of a material term of the tenancy)?
Are the tenants entitled to recover the filing fee for their application?

Background and Evidence

This tenancy began in October 2014 as a month to month, oral tenancy agreement. The tenants testified that there was no written tenancy agreement created or signed. The landlord claimed that the rental application was evidence of the tenancy agreement terms but provided no residential tenancy agreement. Neither party provided a copy of a tenancy agreement as evidence for this hearing.

The rental application form submitted by the landlords and dated September 29, 2014 indicated that the tenants had 2 children, 1 dog and 1 cat. Tenant W testified that she completed the application form. Both tenants testified that, prior to moving in to the rental unit, the tenants adopted a second dog. The tenants testified that the landlords were present at their move-in and were introduced to all of their animals. The tenants testified that, although the tenants have had all of these animals since 2014, the landlords have only raised the issue of the animals recently after adjudication of the matter of an improper rent increase to the tenants.

The parties agreed that while a \$487.50 security deposit was given to the landlords at the start of the tenancy, no pet damage deposit was given. The tenants gave undisputed testimony that they pay their rent in accordance with the Act but have had recent issues with the landlords' attempts to raise the rent as well as the landlords' recent refusal to accept rent.

The landlords testified that Tenant N's brother is also residing at the house. The landlords' lawyer asked the landlords when and how often – the landlords responded that they do not know. Tenant N testified that his brother comes to visit approximately 5 times per month however, during these past few summer months, his brother has not stayed over at all as his children have been staying with him. He testified that the landlords have been aware from the outset of the tenancy that Tenant N's children would visit for periods of time.

Beyond the number of occupants because of the brother's stay at the rental unit as well as the number of animals, the landlords submit that the tenants refuse to abide by any of the residential rules or any requests that the landlords make to the tenants. The landlords also suggested that the tenants were subletting the rental unit. However, the landlord was unable to explain the nature of the alleged subletting. The tenants denied that they were subletting the unit, indicating they have resided in the rental unit at the outset of the tenancy and that they continue to reside in the rental unit. The tenants testified that this is their fourth hearing attending with the landlords.

Analysis

Throughout the hearing, despite repeated attempts to advise the landlords to wait for their turn to speak, the landlords spoke out, interrupting other party's testimony. The landlords spoke through each other's testimony; it was very difficult to understand their testimony. At one point, landlord GB was asked to exit the hearing until his testimony was required. However, he did not do so. The landlords spoke through the tenants'

testimony disrupting the teleconference numerous times. The landlords also spoke over this arbitrator and their own counsel. Therefore, I note that I have considered all of the documentary submissions provided by each party. I have also considered the submission of the landlords' lawyer both at the outset and at the end of the hearing. Further, I have considered the testimony of the tenants and the landlords.

When a tenant makes an application to cancel a notice to end tenancy, the burden falls to the landlord to justify the grounds to end the tenancy and the validity of the notice. The landlords also made an application for an Order of Possession. On issuing a 1 Month Notice to End Tenancy for Cause on June 15, 2017, the landlords claimed that;

- *the tenant has assigned or sublet the rental unit without the landlord's consent and/or*
- *the tenants have more occupants (human and animal) than they are permitted to have in the rental unit.*

The landlords relied on their testimony at this hearing stating that the tenants signed a tenancy agreement and are bound by that agreement. However, the landlords did not submit a tenancy agreement for my consideration on these applications. Therefore, I dismiss this argument submitted by the landlords.

The landlords testified that there are more animals living in the rental unit than was agreed upon. However, as the only information on the terms of the tenancy is based on a sparse, one page tenancy rental application, I find that the landlords have provided insufficient evidence to show that the tenants have violated the tenancy agreement by adding an additional dog to the residential home.

I note that, based on all of the evidence and testimony before me at this hearing, I accept the evidence of the tenants. I find that evidence more credible than the evidence of the landlords. I find that the evidence of the tenants is logically consistent and that the tenants attempted to remain calm and candid in their testimony, despite the argumentative and interruptive nature of this hearing.

I accept the tenants' testimony that they have advised the landlords about their additional dog and the landlords are aware of the additional dog after September 2014. I accept the testimony of the tenants that family (children, brothers) visit on occasion at the unit but that no one other than those identified to the landlord are residing in the rental unit.

The nature of the landlord – tenant relationship requires communication that is both respectful and clear. As there is no written tenancy agreement and the landlords bear the burden of proof with respect to their request for an Order of Possession, the burden falls again to the landlords to prove the terms of this tenancy. The landlords did not submit sufficient documentary evidence to support their position at this hearing. The landlords did not create a tenancy agreement within which they outlined the terms of this tenancy. When a landlord fails to outline the terms of the tenancy agreement or if a feature of the tenancy agreement is vague or unclear, any ambiguity is to the benefit of the tenant.

Based on the evidence before me, I find that the landlord has *not* shown sufficient grounds to validate the 1 Month Notice and obtain an end to this tenancy for Cause. The tenant's application pursuant to section 47(4) of the *Act* to cancel the Notice to End Tenancy issued by the landlords is successful. The 1 Month Notice is cancelled.

Conclusion

The tenants' application is granted. The landlord's 1 Month Notice to End Tenancy for Cause is cancelled. The tenancy shall continue.

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 15, 2017

Residential Tenancy Branch