



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 reconvened as a Review Hearing.

The original hearing convened before me on July 13, 2017 in regard to the tenant's application for an order cancelling a 1 Month Notice to End Tenancy for Cause (the "1 Month Notice") and recovery of the filing fee. The tenant's application to cancel the 1 Month Notice and recover the filing fee was granted.

On July 25, 2017, the landlords made an application for review consideration, which was granted on the basis that they have new and relevant evidence that was not available at the time of the original hearing. The original decision was suspended.

The new evidence is a cover email to a letter from the tenant submitted into written evidence in the first hearing showing that the letter was received by the landlords on May 18, 2017.

Based on this new evidence, and pursuant to sections 58 and 82 of the *Act*, the Arbitrator for the review application ordered the parties to participate in a new hearing, and the original decision was suspended. An Arbitrator at a new hearing may confirm, vary, or set aside the original decision.

This new hearing dealt with the Application for Dispute Resolution by the tenant to cancel the 1 Month Notice and recover the filing fee for their application.

Both parties attended the hearing and were given a full opportunity to be heard, to present affirmed testimony, to make submissions, cross-examine one another, 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 parties' evidence, the 1 Month Notice, the tenant's application or the review application decision. Both parties testified that they received all materials and I find that the parties were duly served in accordance with sections 88 and 89 of the *Act*.

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

This tenancy began in December, 2003. There is a written tenancy agreement and addendum which sets out 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. A copy of the tenancy agreement and addendum were submitted into written evidence.

The tenant paid a pet damage deposit of \$327.00 in 2008 when he acquired a dog. He signed another copy of the tenancy agreement addendum reaffirming his understanding of the building rules.

The parties testified that in early 2017 the tenant began housing and caring for two additional dogs. The tenant testified that this was intended to be a temporary situation while another resident of the rental building, the owner of the two dogs was hospitalized. The original owner of the dogs passed away and the tenant testified that he was making arrangements for the dogs to be adopted.

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 landlord submitted into written evidence a five-page letter dated May 13, 2017, but sent to the landlords by the tenant on May 18, 2017. The landlord testified that based on the phrasing used in the tenant's May 13, 2017 letter he believes that the tenant

continued to house the two additional dogs in defiance of the tenancy rules. The tenant writes in the letter "I now only watch [the dogs] 2-4 times a week (and I will continue to do so)".

The landlord testified that other tenants of the rental building have reported seeing the tenant walk the dogs after May 15, 2017. The landlord said that he was informed by other tenants that they housed the additional dogs for a time in their rental units at the tenant's request.

The landlord testified that he does not have knowledge of whether the dogs continue to reside with the tenant. The landlord submitted into written evidence photographs of garbage cans kept on the landing outside of the tenant's rental unit containing dog feces. The landlord said that he has no evidence that the feces is not solely the product of the one dog the tenant is permitted to keep.

The tenant testified that he made arrangements for the two dogs he was minding to be out of the rental unit on or about May 10, 2017. The tenant said that the dogs were taken by other residents of the rental building temporarily. The dogs were finally adopted by someone who resides outside of the rental building on May 26, 2017. The tenant said that he has had no contact with the dogs since the adoption. The tenant submitted into written evidence copies of affidavits and correspondence from the original owner's heir stating that the dogs were temporarily minded by the tenant but were removed from the rental unit on May 10, 2017 and adopted by someone on May 26, 2017. The tenant included in the written evidence a letter dated June 26, 2017 from the new owners who state that they adopted the dogs on May 26, 2017.

The tenant states in the letter to the landlord sent on May 18, 2017 that "I do not own three dogs, I never have", "I was watching the dogs full-time", "I took them to my home to watch fulltime on a vey temporarily (two month) basis".

The tenant submitted into written evidence an email dated May 19, 2017 sent to the landlord in which the tenant states "I do not own three dogs, their is absolutely nothing suggesting I was attempting to keep three dogs".

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 do not find that the landlord has shown sufficient evidence that the breach was not corrected after the tenant was served with the landlord's letter. I find the tenant's letter of May 18, 2017 to be insufficient to conclude that the tenant did not correct the breach by removing the two additional dogs from the rental unit. The five page letter only references the dogs in a few pages and there the tenant is consistent in stating that he has merely been minding the dogs. In the letter the tenant states that he watches the dogs 2-4 times a week and will continue to do so. I do not find that this sentence is sufficient evidence to conclude that the tenant did not comply with the landlord's demands. I find that the inclusion of a few ambiguous passages in a five page letter to be insufficient to conclude that there is a continued violation of a material term that should lead to ending a tenancy.

I do not find the landlords' photograph of a waste bin outside the tenant's rental unit to be sufficient evidence to show that the tenant continues to have three dogs in the rental unit. There is undisputed evidence that the tenant owns one dog as allowed under the tenancy agreement. I accept the tenant's evidence that the waste bin is the result of the one dog owned by the tenant.

I find that the landlords have not shown on a balance of probabilities that the breach in a term of the agreement was not corrected in the timeframe provided by the landlord. I find that the letter of May 18, 2017 is not sufficient to conclude that the tenant did not comply with the landlord's demands. A lengthy, emotional letter that states that the

tenant will continue to “watch” the dogs 2-4 times a week is not sufficient to find that there is a continued breach that gives rise to an end to the tenancy.

I do not find that the landlords have shown on a balance of probabilities 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 original decision and order made on July 13, 2017 is confirmed.

The tenant’s application to set aside the 1 Month Notice is granted. The 1 Month Notice is of no continuing force or effect. This tenancy continues until ended in accordance with the Act.

The tenant is entitled to recover the \$100.00 filing fee from the landlords.

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: October 19, 2017

Residential Tenancy Branch