



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding TRIPLE STAR HOLDINGS
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC

Introduction

This hearing dealt with an application by the tenants pursuant to the *Residential Tenancy Act* ("the Act") for an order as follows:

- to cancel a 1 Month Notice to End Tenancy given for Cause ("1 Month Notice") pursuant to section 47 *Act*.

Tenant C.K. attended the hearing on behalf of the tenants, while Building Manager K.S and landlord D.W. (the "landlords") appeared on behalf of the corporate the landlord. All parties present were given a full opportunity to be heard, to present their testimony and to make submissions under oath.

The tenant acknowledged receipt of the landlord's 1 Month Notice to End Tenancy, given in person on November 1, 2017. Pursuant to section 88 of the *Act*, I find that the tenants were served with the landlord's Notice on the same day as its service.

The landlords acknowledged receipt of the tenants' application for dispute resolution on November 17, 2017. Pursuant to section 89 of the *Act* the landlord is found to have been served with the tenants' application on the same day as its service.

Following opening remarks, the tenant stated that they had received the landlord's evidentiary package on January 23, 2017 by way of Canada Post Registered Mail but had not yet had a chance to review its contents. The landlords acknowledged that this evidence was sent late; however, they argued that an error on behalf of the postal service had led the evidentiary package to the wrong city.

Residential Tenancy Policy Guideline 3.15 states, "The respondent must ensure evidence that the respondent intends to rely on at the hearing is served on the applicant and submitted as soon as possible. Subject to Rule 3.17, the respondent's evidence must be received by the applicant and the Residential Tenancy Branch not less than seven days before the hearing."

I find that the landlords failed to serve the tenants with their evidentiary package pursuant to the *Rules of Procedure* and I decline to accept the physical evidence submitted to the hearing by the landlords. The landlords were served with the tenants' application for dispute in November 2017. There is no reason that evidentiary documentation related to the hearing could not have been submitted earlier. While I acknowledge that a postal error caused the package to be sent to the wrong city, *Rule of Procedure* 3.15 says that evidence must be submitted as soon as possible. The landlords' unnecessary delay in submitting evidence until January 2018 directly led to their evidence being received late, following a postal error. For these reasons, I decline to allow the landlords physical evidence into the hearing.

At approximately the 14 minute mark of the hearing, the tenant disconnected from the teleconference. The hearing continued in his absence and the tenant rejoined the teleconference at approximately the 30 minute mark.

Issue(s) to be Decided

Can the tenants cancel the landlord's 1 Month Notice to End Tenancy for Cause?

Background and Evidence

Testimony was presented to the hearing by the landlord that this tenancy began on November 1, 2014. Rent was \$825.00 and rose to \$895.00 per month. A security deposit of \$412.50 collected at the outset of the tenancy continues to be held by the landlord.

The landlords explained that the entirety of his 1 Month Notice to End Tenancy for Cause centered on the non-payment of a pet deposit by the tenants. Specifically, on their 1 Month Notice, the landlords cited the following reasons for seeking an end to the tenancy;

Tenant or a person permitted on the property by the tenant has –

- significantly interfered with or unreasonably disturbed another occupant or the landlord
- seriously jeopardized the health or safety or lawful right of another occupant or the landlord
- put the landlord's property at significant risk

Tenant has engaged in illegal activity that has, or is likely to –

- adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant or the landlord

Breach of a Material Term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so

Pet Damage Deposit was not paid within 30 Days as required by the Tenancy Agreement

The landlords explained that the tenants had a dog when they first entered into the tenancy, and that despite several warnings, no pet deposit was ever collected by the previous building manager. This building manager was relieved of his duties in the Fall of 2017 and the current building manager, K.S., was installed as building manager. K.S. stated that the landlord was made aware of the presence of a dog in the building by the former building manager in approximately July 2017. She said that after being installment in the job of building manager, she was tasked by the landlord with collecting a pet security deposit. K.S. testified that despite several conversations with the tenants, no pet deposit had been collected, and the tenants refused to pay any payment plans that had been offered to them.

The landlords said that the dog was a large animal which intimidated the other residents. They explained that in addition to a non-payment of a pet security deposit, the tenants regularly left the back door of the rental building open, so that his guests could easily access this building. They said that this caused a disturbance to the other occupants and jeopardized the security of the building.

The tenant acknowledged having a dog from the outset of his tenancy but said that the previously building manager had allowed him to keep the dog without a deposit. This testimony was disputed by the landlord who produced a letter from the previous landlord who wrote that a dog was present at the start of the tenancy but that no deposit was collected despite being requested. The tenants said that they had a second dog in the rental unit for approximately one year, but this dog was given away.

Analysis

The landlords have applied for an Order of Possession based on a 1 Month Notice for Cause. The landlords explained that the majority of their claim centers on the tenants non-payment of the pet deposit, and the disturbances that this animal has caused the other residents.

Section 47(1) of the *Act* states, "A landlord may end a tenancy by giving notice to end the tenancy if the tenant does not pay the pet deposit within 30 days after the date it is required to be paid under the tenancy agreement."

Residential Tenancy Policy Guideline #31 examines the issues of Pet Damage Deposits in further detail. It largely repeats what is explained in section 20(c) of the *Act*, which says, "A landlord must not require a pet damage deposit at any time other than when the landlord and the tenant enter into the tenancy agreement, or if the tenant acquires a pet during the term of a tenancy agreement, when the landlord agrees that the tenant may keep the pet on the residential property." However, the *Policy Guideline* goes on to explain, "If a tenancy agreement is silent about pets, then the landlord cannot require a pet damage deposit."

Based on the oral testimony presented at the hearing by the landlord, I find that the tenants had a pet upon signing the tenancy agreement on November 1, 2014 and that the former property manager was aware of the presence of this animal. The landlord therefore had 30 days from the date of tenancy agreement being signed to collect a Pet Damage Deposit. Following the expiration of this time period, the landlord had a right to issue a Notice to End Tenancy for non-payment of a Pet Damage Deposit. The building manager at the time failed to do this and I find that failing to act in a timely manner, that the landlord waived his right to enforce a Notice to End Tenancy.

As is explained by section 20(c) of the *Act*, "A landlord must not require a pet damage deposit at any time other than when the landlord and the tenant enter into the tenancy agreement." The tenants lived on the premises for three years without a Notice to End Tenancy being issued against them for non-payment of the Pet Damage Deposit when the landlord was aware of the presence of the dog. If the landlord had serious concerns about this non-payment, a Notice to End Tenancy should have been issued within 30 days of the non-payment of the Deposit, in this case, December 1, 2014. For these reasons, I dismiss this portion of the landlord's 1 Month Notice.

A large portion of the landlord's Notice to End Tenancy largely focused on the non-payment of a pet deposit and the manner in which this animal disturbed other residents. I find very limited testimony was presented by the landlords concerning the manner in which the dog has; significantly interfered with or unreasonably disturbed another occupant or the landlord, seriously jeopardized the health or safety or lawful right of another occupant or the landlord, put the landlord's property at significant risk or adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant or the landlord. The landlords said they had concerns regarding the dog biting other residents, though no letters of complaint or other such evidence from other tenants was presented at the hearing. For these reasons, I dismiss this portion of the landlord's 1 Month Notice.

The final reasons cited on the landlord's Notice to End Tenancy concern illegal activity and a breach of a material term of the tenancy. *Residential Tenancy Guideline #32* explains, "The term *illegal activity* would include a serious violation of federal, provincial or municipal law, whether or not it is an offence under the Criminal Code. Based on the oral testimony presented at the hearing by the landlords, I do not find that any illegal activity as described above has occurred. The landlord argued that the "illegal activity" was the tenants' non-payment of the Pet Security Deposit; however, as is evident based on the description provided by *Policy Guideline #32*, this non-payment would not constitute an "illegal activity." For these reasons, this portion of the landlord's 1 Month Notice is dismissed.

Residential Tenancy Policy Guideline #8 explains that, "To end a tenancy agreement for breach of a material term, the party alleging a breach must inform the other party in writing: That there is a problem; that they believe the problem is a breach of a material term of the tenancy agreement; that the problem must be fixed by a deadline included in the letter, and that the

deadline must be reasonable; and that if the problem is not fixed by the deadline, the party will end the tenancy.”

The landlords did not present any oral testimony describing that the above described steps had been taken by the landlord. In order for a landlord to end a tenancy for a Breach of a Material Term, it is imperative that a landlord follow the proper avenues for doing so. I find that the landlord has failed to sufficiently demonstrate that the tenants were given a written warning alerting them to a potential breach of a material term of the tenancy agreement. For these reasons, I dismiss this portion of the landlord's 1 Month Notice.

Conclusion

The tenants were successful in cancelling the landlord's 1 Month Notice. This tenancy shall continue until it is ended in accordance with the *Act*.

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: January 29, 2018

Residential Tenancy Branch