



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC

Introduction

This hearing convened as a result of Tenant's Application for Dispute Resolution wherein the Tenant requested an Order canceling a 1 Month Notice to End Tenancy for Cause issued on April 2, 2018 (the "Notice")

The hearing was conducted by teleconference on June 4, 2018. Both parties called into the hearing and were provided the opportunity to present their evidence orally and in written and documentary form and to make submissions to me.

The parties agreed that all evidence that each party provided had been exchanged. No issues with respect to service or delivery of documents or evidence were raised.

I have reviewed all oral and written evidence before me that met the requirements of the *Residential Tenancy Branch Rules of Procedure*. However, not all details of the respective submissions and or arguments are reproduced here; further, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue to be Decided

1. Should the Notice be cancelled?

Background and Evidence

Rule 6.6 of the Residential Tenancy Branch Rules of Procedure provides that when a tenant applies to cancel a notice to end tenancy the burden of proof is on the landlord to prove, on a balance of probabilities, the reasons for ending the tenancy. As such, even

though the Tenant was the applicant in this proceeding, the Landlord presented her evidence first.

The Landlord testified as follows. She confirmed that the tenancy began September 1, 2017. The rental unit is an apartment building owned by the Landlord with 11 units.

The Landlord testified that she issued the Notice as she believes the Tenant is in breach of the tenancy agreement because she has a dog. The reasons cited on the Notice are as follows:

Breach of a material term that was not corrected within a reasonable time after written notice to do so.

The Landlord stated that the Tenant applied for tenancy on August 13, 2017, although the application for tenancy was not before me, the parties agreed that the following information was included on the application with respect to pets

Number of pets: 1

Type of pet: cat

Spayed or neutered? Neutered is circled

The Landlord stated that they had just purchased the building in March of 2017 and at that time she was handling the property management in conjunction with a property manager. The Landlord stated that she believed that she personally showed the rental unit to the Tenant.

The Landlord confirmed that the application was filled in by the Tenant. She could not remember if the Tenant filled it out in front of her, or if she filled it out and then dropped it off at a later time.

The residential tenancy agreement was filled out by the manager and signed by her on September 7, 2017. The Tenant signed the agreement on September 8, 2017 and her roommate, D.B. signed on September 20, 2017.

A review of the residential tenancy agreement confirms that the agreement does not include any restrictions on pets. In addition, the tenancy agreement confirms that the Tenant paid a pet damage deposit in the amount of \$437.50.

Attached to the agreement is a document titled “Additional Terms to the Residential Tenancy Agreement” (the “Addendum”) wherein the Tenant agreed to the following material terms:

1. Smoke Free Environment.

Due to the increased risk of fire and known health risks of exposure to second-hand tobacco smoke, it is a material term of this tenancy agreement that the smoking of any combustible material is prohibited anywhere on the property. Failure to comply may be cause for ending the tenancy agreement.

2. Breaking a Fixed-Term Lease.

Our fixed-term lease is a legally-binding contract. Should the tenant wish to break this contract within the period of their lease, a liquidated damage fee of one additional month's rent will apply.

3. Nuisance Complaint.

In the event of a nuisance complaint in which law enforcement are called to attend, this will immediately result in the tenant being served with a notice to evict the premises.

I hereby acknowledge that I have read and understood the above terms and I agree to fully comply, recognizing they are material terms of my tenancy agreement. I also acknowledge that terms 1 & 3 apply to my guests and visitors.

The Landlord stated that she did not know when the Tenant got a “puppy”, although she believes that she was informed by another person that there was a dog in the rental unit.

The Landlord stated that she spoke to the Tenant in early March 2018 about her “puppy” and told the Tenant that she could not have a dog. The Tenant stated that she couldn't live without the dog and would move out if she had to get rid of it.

The Landlord then saw the dog and was surprised because it is a very large breed which she believed was a mastiff.

On March 17, 2018 the Landlord sent a formal letter to the Tenant telling her to remove the dog within 7 days, failing which she asked that the Tenant vacate by April 30, 2018. A copy of that letter was provided in evidence.

The Tenant applied for dispute resolution on March 21, 2018. At that time the Landlord had not issued a formal notice to end tenancy; although the Tenant interpreted the March 17, 2018 letter to be a “30 day notice”.

On April 2, 2018 the Landlord issued the Notice citing that the Tenant had breached a material term of the tenancy agreement.

The Landlord stated that she has received complaints about “a dog” although she does not know whether it is the Tenant’s dog or another dog.

The Landlord further stated that of the 11 units there are several large dogs on the property. She stated that’s why she knew that she didn’t want any more tenants to have any more large dogs as it was already overpopulated with large dogs and people not picking up.

The Landlord said that whenever anyone tells her that they want to get a dog, she immediately tells them no, as there is no space for a large dog.

In response to the Landlord’s testimony the Tenant testified as follows.

The Tenant confirmed that she obtained the application form from the property manager when she viewed the rental unit on approximately April 13, 2017. She then filled it out and then dropped it off in the mailbox.

The Tenant stated that there are about 11 units in the Tenant’s property. She confirmed that on her floor alone there are four dogs, one beside her and two across from her. The Tenant stated that in her building alone she is not sure how many dogs there are, but in the entire rental property there are many.

The Tenant stated that she was not told that she could only have a cat when she rented this property. The Tenant stated that she paid a pet damage deposit because she had a cat, but there was no discussion whatsoever about any restrictions on pets. The Tenant testified that the property manager did not tell her she could not get a dog, nor was there any discussion about restrictions on the number, size, or breed of pets.

The Tenant stated that the only thing in writing that she ever received about the dog was the March 17, 2018 letter from the Landlord which was provided in evidence.

The Tenant further testified that on March 1, 2018 the property manager, S.M., asked the Tenant if she had a dog to which the Tenant responded yes. S.M. then asked her to pay a second pet damage deposit.

When asked, the Landlord stated that she had no recollection of speaking to S.M. about the request for a second damage deposit and that it would surprise her as they had decided “no more dogs”.

The Tenant confirmed that the dog is a Blue nosed Staffordshire terrier and was born September 20, 2017.

Analysis

The Landlord seeks to end the tenancy on the basis that the Tenant is in breach of a material term of the tenancy.

Residential Tenancy Branch Policy Guideline 8—Unconscionable and Material Terms provides in part as follows:

“...A material term is a term that the parties both agree is so important that the most trivial breach of that term gives the other party the right to end the agreement.

To determine the materiality of a term during a dispute resolution hearing, the Residential Tenancy Branch will focus upon the importance of the term in the overall scheme of the tenancy agreement, as opposed to the consequences of the breach. It falls to the person relying on the term to present evidence and argument supporting the proposition that the term was a material term...”

As noted, the tenancy agreement does not include a provision prohibiting the Tenant from having a dog.

I accept the Tenant’s evidence that in her discussions with the property manager, she was not informed that she could not have a dog. I further accept her testimony that there are numerous dogs on the property and three more dogs on her four unit floor alone. I also accept the Tenant’s evidence that the property manager was aware she had a dog and asked her to pay a second pet damage deposit. The Landlord could not recall if she discussed this issue with the property manager only to say it would surprise her considering her “no dog policy”. While it is always difficult to reconcile conflicting versions of events, in this case I prefer the first hand testimony of the Tenant over the Landlord’s evidence.

While I understand the Landlord may wish to limit the number of dogs on the property now that she is an owner, and particularly as it sounds as though there are numerous dogs on the rental property, it is her responsibility to include any pet limitations in the

tenancy agreement; as noted, there is no such limitation articulated in the agreement which was introduced in evidence.

As noted, the Addendum to the residential tenancy agreement set out three material terms. Had the Landlord's "no more dogs" policy been a material term, it could have easily been provided in the body of the tenancy agreement, or in the addendum. In failing to note the alleged pet restriction on either document, I find that it was simply not communicated to the Tenant and more importantly, is not a material term of this tenancy.

In all the circumstances, I find the Landlord has failed to prove that the Tenant was prohibited from having a dog, and that this restriction was a *material term* of the tenancy. I therefore find the Landlord has failed to prove the reasons set forth in the Notice.

Conclusion

The Notice is cancelled. The tenancy shall continue until ended in accordance with the *Residential Tenancy 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: June 6, 2018

Residential Tenancy Branch