



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes FF OPC CNC LRE

Introduction

This hearing dealt with the applications from both the landlord and the tenant pursuant to the *Residential Tenancy Act* (the *Act*).

The landlord applied for:

- an Order of possession for Cause pursuant to section 55 of the *Act*; and
- a return of the filing fee pursuant to section 72 of the *Act*.

The tenant applied for:

- a cancellation of the 1 Month Notice to End Tenancy for Caused rent pursuant to section 47 of the *Act*;
- an Order restricting the landlord's right to enter the rental unit pursuant to section 70 of the *Act*; and
- a return of the filing fee pursuant to section 72 of the *Act*.

Both the tenant and the landlord attended the hearing. Both parties were given a full opportunity to be heard, to present testimony and to make submissions.

Both parties acknowledged receipt of each other's applications for dispute resolution and evidentiary packages. I find that both parties were duly served in accordance with the *Act*.

Following opening remarks, the tenant said she was only pursuing the portion of her application related to a cancellation of the landlord's Notice to End Tenancy and seeking a return of the filing fee.

Issue(s) to be Decided

Can the tenant cancel the landlord's notice to end tenancy? If not, is the landlord entitled to an Order of Possession?

Is either party entitled to a return of the filing fee?

Background and Evidence

Undisputed testimony was provided to the hearing by the landlord that this tenancy began in August 2017. Rent is \$1,650.00 per month, and a security deposit of \$825.00 paid at the outset of the tenancy continues to be held by the landlord.

The landlord said that he issued a 1 Month Notice to End Tenancy for Cause ("1 Month Notice") on April 9, 2018 because the tenant continued to house a dog, contrary to the terms of their tenancy agreement. The reason cited on the 1 Month Notice served on the tenant is listed as follows, *Breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.*

The landlord argued that the tenancy specifically states that no pets are allowed on the premises and he said that he gave a warning by text message to the tenant on February 28, 2018 that pets were not permitted. The landlord said that this warning by text was followed by several verbal warning.

A review of the tenancy agreement signed by the parties' shows a clause which reads as follows: *No pets or animals are allowed to be kept in or about the property without the prior written permission of the Landlord. Upon thirty (30) days' notice, the Landlord may revoke any consent previously given pursuant to this cause.*

The tenant acknowledged that a dog lived in the property with her and her son, but she argued that the landlord was well aware of the dog's presence and had never previously raised any concerns. The tenant said that she and the landlord had a good relationship, where the dog was greeted by the landlord when the landlord attended the property. The tenant explained that she was informed upon move-in that pets were "ok" and she noted that she had a cat which was known to the landlord, when she first occupied the rental unit. The tenant continued by stating that several occupants of other suites in the rental unit had dogs in the past. She said that these pets were known to the landlord and that no issues were ever raised about their presence.

Analysis

A party may end a tenancy for the breach of a material term of the tenancy but the standard of proof is high. To determine the materiality of a term, an Arbitrator will focus upon the importance of the term in the overall scheme of the Agreement, as opposed to the consequences of the breach. It falls to the person relying on the term, in this case the landlord, to present evidence and argument supporting the proposition that the term was a material term. As noted in *RTB Policy Guideline #8*, 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. The question of whether or not a term is material and goes to the root of the contract must be determined in every case in respect of the facts and circumstances surrounding the creation of the Agreement in question. It is entirely possible that the same term may be material in one agreement and not material in another. Simply because the parties have stated in the agreement that one or more terms are material is not decisive. The Arbitrator will look at the true intention of the parties in determining whether or not the clause is material.

Policy Guideline #8 reads in part as follows:

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

While the tenant has acknowledged that a pet occupies the rental unit, I find that the landlord has failed to adequately warn her of a potential breach of a material term of the tenancy agreement. The landlord provided one text message on February 28, 2018 to the tenant which purported to warn the tenant of his displeasure with the presence of the dog.

I find that the landlord is relying heavily on this text message as adequate warning, and I find that little evidence was presented that the landlord warned the tenant, as described above, of a potential breach of a material term of the tenancy agreement. I find that the landlord has not met the burden of proof demonstrating that the tenant has

breached a material term of this tenancy. For these reasons, I dismiss the landlord's application for an Order of Possession.

As the tenant was successful in her application to cancel the landlord's 1 Month Notice, she may recover the \$100.00 filing fee from the landlord. In lieu of a Monetary Order, the tenant, pursuant to section 72 of the *Act*, may withhold \$100.00 from a future rental payment on **one** occasion.

Conclusion

The landlord's 1 Month Notice to End the Tenancy is cancelled and of no continuing force or effect. This tenancy shall continue until it is ended in accordance with the *Act*.

The tenant may withhold \$100.00 from a future rent payment on **one** occasion as satisfaction for recovery of the filing fee pursuant to section 72 of 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: June 6, 2018

Residential Tenancy Branch