



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MT, CNR, OLC, LRE

Introduction

On May 10, 2018, the Tenant made an Application for Dispute Resolution under the *Residential Tenancy Act* ("the Act") for more time to dispute a notice to end tenancy and to cancel a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities. The Tenant is also seeking that the Landlord comply with the tenancy agreement and to suspend or set conditions on the Landlord's right to enter the rental unit.

The matter was set for a conference call hearing. The Tenant and Landlord attended the teleconference hearing.

At the start of the hearing I introduced myself and the participants. The hearing process was explained.

The Tenant testified that he never served a copy of his digital evidence to the Landlord. Since the Landlord has not had an opportunity to consider or respond to the Tenant's evidence, the Tenant's digital photographic evidence is excluded from this hearing. The parties were provided with an opportunity to ask questions about the hearing process. They were provided with the opportunity to present affirmed oral testimony and to make submissions during the hearing.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Preliminary and Procedural Matters

The Tenant applied for more time to dispute two 10 Day Notice to End Tenancy for Unpaid Rent or Utilities. Section 66 of the Act addresses extensions to time limits

established by the Act. This section provides that the director may extend a time limit established by this Act only in exceptional circumstances.

The Landlord testified that she is not seeking to evict the Tenant on the basis of the 10 Day Notices to End Tenancy for Unpaid Rent or Utilities. The Landlord withdrew the following notices to end tenancy:

- 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated April 5, 2018
- 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated May 1, 2018.

The hearing proceeded on the issues that the Landlord comply with the tenancy agreement and to suspend or set conditions on the Landlord's right to enter the rental unit.

Issues to be Decided

- Is the Landlord complying with the Act regarding entry into the rental unit?
- Does the tenancy agreement allow the Tenant to have a fish tank?

Background and Evidence

The parties testified that the tenancy began on September 1, 2015, on a month to month basis. The Tenant is required to pay the Landlord rent in the amount of \$1,000.00 by the first day of each month. The Tenant paid the Landlord a security deposit of \$487.50.

The Tenant testified that the Landlord has entered his rental unit without giving the proper 24 hour notice in writing. The Tenant wants the Landlord to comply with the Act.

The Landlord responded that proper notice of entry was posted on the Tenants door prior to entry.

The Tenant is seeking a determination on whether he is permitted to have a fish tank. The Tenant testified that he has had a fish tank for three years and that the Landlord was aware. He submitted that the Landlord wants him to remove the fish tank. He submitted that his tenancy agreement does not prohibit him from having a fish tank.

In reply, the Landlord testified that they do not allow fish tanks in the wood frame rental property. The Landlord testified that she became aware the Tenant had a fish tank in

February 2018. The Landlord points out that the tenancy agreement did not include permission for a pet. The Landlord testified that the Tenant did not seek permission prior to getting a fish tank.

The Landlord referred to the tenancy agreement that contains terms regarding pets and liquid filled appliances. The Landlord provided a copy of the tenancy agreement. The agreement provides that no pets will be allowed without the prior written permission of the Landlord. The agreement also provides that water beds must be approved in writing and other liquid filled furniture or major appliances may not be installed by Tennats without prior written approval by the Landlord.

In reply, the Tenant acknowledged that he did not seek permission to have a fish tank; however, he submitted that he has had it for three years and the Landlord was aware.

Analysis

Section 29 states a Landlord must not enter a rental unit that is subject to a tenancy agreement for any purpose unless one of the following applies:

- (a) The tenant gives permission at the time of the entry or not more than 30 days before the entry;
- (b) At least 24 hours and not more than 30 days before the entry, the landlord gives the tenant written notice that includes the following information:
 - (i) The purpose for entering, which must be reasonable;
 - (ii) The date and the time of the entry, which must be between 8 a.m. and 9 p.m. unless the tenant otherwise agrees;
- (c) The landlord provides housekeeping or related services under the terms of a written tenancy agreement and the entry is for that purpose and in accordance with those terms;
- (d) The landlord has an order of the director authorizing the entry;
- (e) The tenant has abandoned the rental unit;
- (f) An emergency exists and the entry is necessary to protect life or property.

Section 88 of the Act provides that a document given or served by posting it to a door is deemed to be received on the 3rd day after it is attached.

Based on the evidence before me, the testimony of the Landlord, and on a balance of probabilities, I make the following findings:

I find that if the Landlord posts a notice of entry on the Tenant's door it is not deemed received by the Tenant until the third day after it is attached. I order the Landlord to comply with the entry requirements of section 29 of the Act.

I find that the Tenant's fish are a pet and the fish tank is liquid filled furniture or an appliance. I find that the tenancy agreement does not permit the Tenant to have a pet and the Tenant did not seek prior written approval from the Landlord to have a pet or a water filled appliance.

The Tenant has testified that he has drained the fish tank. If the Tenant fails to comply with the tenancy agreement on this issue, the Landlord is at liberty to issue a 1 Month Notice To End Tenancy For Cause for breach of a term of the tenancy agreement.

Conclusion

I order the Landlord to comply with the entry requirements of section 29 of the Act.

I find that the Tenant's fish are a pet and the fish tank is liquid filled furniture or an appliance. I find that the tenancy agreement does not permit the Tenant to have a pet or water filled appliance without permission from the Landlord.

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: July 10, 2018

Residential Tenancy Branch