



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, MNDC, RP, LRE

Introduction

On July 20, 2018, the Tenants submitted an Application for Dispute Resolution under the *Residential Tenancy Act* (“the Act”) seeking to cancel a 1 Month Notice to End Tenancy for Cause (“the 1 Month Notice”); for money owed or compensation for damage or loss; for emergency repairs; and to restrict the Landlord’s right to enter the unit.

The Landlord and Tenants appeared at the hearing. The hearing process was explained and the participants were asked if they had any questions. Both parties provided affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and make submissions to me.

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 Residential Tenancy Branch Rules of Procedure permit an Arbitrator the discretion to dismiss unrelated claims with or without leave to reapply. For example, if a party has applied to cancel a notice to end tenancy, or is applying for an order of possession, an Arbitrator may decline to hear other claims that have been included in the application and the Arbitrator may dismiss such matters with or without leave to reapply.

I find that the most important matter to decide is whether or not the tenancy will end based on the 1 Month Notice To End Tenancy For Cause.

The Tenants other claims are dismissed with leave to reapply.

During the hearing the Landlord withdrew the reason for ending the tenancy listed within the 1 Month Notice that the security or pet damage deposit was not paid within 30 days as required by the tenancy agreement.

The Tenant consented to amending the application to the correct name and spelling of the Landlord. The Application is amended accordingly.

The Tenant testified that he served his documentary evidence to the Landlord using email. The Landlord testified that she never received a Notice of Dispute Resolution Proceeding or any other documentary evidence from the Tenant prior to the hearing.

Since email is not an approved method of service of documents under the Act, and since the Landlord has not seen or had a chance to respond to the Tenants' evidence, it would be unfair for me to consider the Tenants' evidence. The Tenant's documentary evidence is excluded from the hearing.

Issue to be Decided

- Does the Landlord have sufficient cause to end the tenancy?

Background and Evidence

Both parties testified that the tenancy commenced on March 20, 2018, as a fixed term tenancy to continue until September 19, 2018. Rent in the amount of \$825.00 is due on the 20th day of each month.

The Landlord served a 1 Month Notice To End Tenancy For Cause to the Tenant on July 12, 2018. The Landlord selected the following reasons for ending the tenancy in the 1 Month Notice:

- Breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written Notice to do so.

The Notice provides information for Tenants who receive the Notice. The Notice states that a Tenant has the right to dispute the Notice within 10 days after receiving it by filing an Application for Dispute Resolution at the Residential Tenancy Branch.

The Tenants disputed the 1 Month Notice within the required time period.

The Landlord testified that the Tenants breached two material terms of the tenancy agreement.

The Landlord testified that the Tenant adopted two cats without the consent of the Landlord. The Landlord testified that the parties did not agree that there would be pets in the unit and the tenancy agreement and tenancy addendum contain clauses that pets are not permitted.

The Landlord testified that the Tenant was given three verbal warnings and two written breach notices asking him to remove the cats.

The Landlord testified that the Tenant failed to remove the cats after providing a reasonable time and consequently the Landlord issued the 1 Month Notice To End Tenancy For Cause.

The Landlord provided a copy of the tenancy agreement and addendum; a photograph of a cat within the Tenants' unit; and a copy of the breach letters that were provided to the Tenants.

The Landlord testified that the Tenants painted some of the interior walls of the rental unit without agreement on the color. The Landlord testified that the Landlord will occasionally permit Tenants to paint if the Landlord agrees to the color. The Landlord testified that the Tenants painted a couple of walls prior to reaching an agreement.

The Landlord provided copies of correspondence that the Landlord sent to the Tenant.

In response to the Landlord's testimony, the Tenant acknowledged that he adopted two cats. The Tenant testified that other occupants have pets and the agent who showed him the rental unit told him that a pet should not be a problem.

The Tenant testified that after receiving the Landlords letters he did not remove the pets because the tenancy agreement does not require him to do so. The Tenant testified that he believes the Landlord added additional terms to the tenancy agreement after he signed the agreement. The Tenant testified that he believes that Landlord added the addendum containing the term that no pets are allowed on the premises without the Landlords prior written consent.

The Tenant testified that he attempted to pay the Landlord a pet damage deposit; however the Landlord refused to accept it. The Tenants still have the cats.

With respect to the painting, The Tenant testified that he told the Landlord about the walls and they agreed to permit him to paint. He testified that they did not reach an agreement on the color.

The Tenant testified that he never received a paper copy of the tenancy agreement; from the Landlord; however, he received an electronic copy via email.

Analysis

In the matter before me, the Landlord has the onus of proof to prove that the reason in the Notice is valid. Based on the evidence and testimony before me, I make the following findings:

I find that there was no agreement to allow a pet at the start of the tenancy. The tenancy agreement with respect to pets is blank, there was no pet damage deposit collected at the start of the tenancy and there is a hand written notation stating “no pets”.

I find that the tenancy agreement was signed by the Tenants on March 20, 2018. The tenancy agreement indicates that there is a 2 page addendum consisting of 7 additional terms. A term in the addendum states that there are no pets allowed on the premises without the Landlords prior approval.

There is insufficient evidence from the Tenants to support that the addendum was introduced after the Tenants signed the tenancy agreement. The Tenant signed the agreement that indicates there was an addendum. The pet term of the addendum is consistent with the tenancy agreement that states “no pets”. I find that the Tenant was not permitted to obtain a pet without prior written approval. I find that the Landlord is not obligated by the tenancy agreement to permit the Tenants to keep the pets.

I find that the Landlord gave the Tenants sufficient time to correct the breach of the tenancy agreement by removing the pets and they failed to do so.

I find that the Tenants breached a material term of the tenancy agreement that was not corrected within a reasonable time after written Notice to do so.

The Tenant's application to cancel the 1 Month Notice is dismissed. The tenancy is ending.

Since the tenancy is ending due to breach of the agreement regarding pets, there is no need to consider the painting issue.

Under section 55 of the Act, when a Tenant's application to cancel a Notice to end tenancy is dismissed and I am satisfied that the Notice to end tenancy complies with the requirements under section 52 regarding form and content, I must grant the Landlord an order of possession.

I find that the 1 Month Notice complies with the requirements of form and content. The Landlord is entitled to an order of possession on the effective date within the 1 Month Notice.

The Landlord is granted an order of possession effective no later than 1:00 pm on September 19 2018, after service on the Tenants. This order may be filed in the Supreme Court and enforced as an order of that Court.

Conclusion

The Tenants' application to cancel the 1 Month Notice To End Tenancy For Cause dated July 12, 2018, is dismissed.

The Landlord is granted an order of possession effective no later than 1:00 pm on September 19, 2018, after service on the Tenants.

The Tenants have leave to reapply for their monetary claim that was not considered in this hearing.

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: September 14, 2018

Residential Tenancy Branch