



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC

Introduction

This hearing was convened in response to an application by the Tenant for an order cancelling a notice to end tenancy pursuant to section 47 of the *Residential Tenancy Act* (the “Act”).

The Landlord and Tenant were each given full opportunity under oath to be heard, to present evidence and to make submissions.

Issue(s) to be Decided

Is the notice to end tenancy valid for its stated reason?

Background and Evidence

The following are agreed facts: The tenancy, under written agreement, started on August 1, 2018. Rent of \$1,800.00 is payable on the first day of each month. At the outset of the tenancy the Landlord collected a security deposit of \$900.00. The tenancy agreement provides that the Tenants are required to pay a pet deposit by August 5, 2018. The Tenants did not pay the pet deposit by this date and on September 10, 2018 the Landlord served the Tenant in person with a one month notice to end tenancy for cause (the “Notice”). The reason stated on the Notice is that the pet deposit was not paid within 30 days as required by the tenancy agreement.

The Landlord states that the Tenants were informed by email dated September 5, 2018 that any agreement on the payment of the pet deposit would have to be in writing with specific dates for payment. The Landlord states that the Tenants did not put terms in writing and that the Landlord therefore never accepted any agreement for the payment of the security deposit past August 5, 2018. The Landlord does not dispute that it received the Tenants' email offer of September 7, 2018 to pay the pet deposit with the rent in installments of \$100.00. the Landlord does not dispute that the Landlord replied by email on the same date setting payments of \$100.00 starting October 1, 2018 with the rent payment and that the payments of \$1,900.00 would then be payable for nine months.

The Landlord argues that the email to the Tenants on September 7, 2018 was not an acceptance of the Tenants offer to make installment payments for the pet deposit as the Tenants did not follow up with terms in writing. The Landlord states that there was no further discussion with the Tenant on the matter of payments after September 7, 2018. The Landlord also states that the Tenants were informed by email dated September 8, 2018 that the pet deposit must be paid in full. The Landlord states that the Tenants paid \$100.00 with the October 2018 rent and \$100.00 with the November 2018 rent. The Landlord confirms that the monies were not returned to the Tenants. The Landlord states that after October 1, 2018 there was no further communication with the Tenants. The Landlord confirms that the rent for November 2018 has been paid by the Tenants. The Landlord provided evidence of texts between the Parties dated August 30, 2018 and I note in one text the Landlord asks if it would help the Tenants to make installments on the pet deposit to which the Tenant agrees.

The Tenants states that she offered to pay the pet deposit in installments of \$100.00 each month with the rent and that the Landlord agreed to these terms with a start date of October 1, 2018 in emails between the Parties dated September 7, 2018. The Tenant states that this agreement was all the Tenant could act on. The Tenant states that their pet is no longer alive and that the Landlord was informed of this in an email

dated September 14, 2018 to the Landlord informing the Landlord of this event. The Tenant states that on October 22, 2018 the Landlord issued a notice to inspect the unit for October 31, 2018 but that the Landlord never attended on that date. The Tenant asks why the Landlord accepted the pet deposit payments if there was no agreement. The Landlord agrees that the notice for inspection was given to the Tenants. The Landlord states that the inspection was not carried out as an emergency arose on that date for the Landlord. The Landlord states that the Tenants were never informed that the Landlord would not attend as notified.

Analysis

Section 47(1)(a) of the Act provides that a landlord may end a tenancy by giving notice to end the tenancy if the tenant does not pay the security deposit or pet damage deposit within 30 days of the date it is required to be paid under the tenancy agreement. The evidence from both Parties shows that the Parties have communicated since the beginning of the tenancy by both text and email. Given this evidence I find that the Parties communicated in writing by text and email. The Landlord's text and email evidence indicates that after August 5, 2018 and as early as August 30, 2018 there were offers in writing by the Landlord for the Tenant to make payments in installments for the pet deposit.

It is undisputed that the Landlord sent the September 7, 2018 email in reply to the Tenants email offer to make installments on the payment of the pet deposit. It is undisputed that this email from the Landlord sets out the amount and dates for the payments including the length of time for the full amount to be paid. These terms are very clear with no vagueness or uncertainty. Given the emails of September 7, 2018 and as the Landlord accepted the pet deposit payments on the first day of each October and November 2018 in accordance with the Landlord's email of September 7, 2018 I find that the tenancy agreement was amended in writing for the Tenants to make pet deposit payments of \$100.00 for nine months starting October 1, 2018. Given the Landlord's acceptance of the monies I do not consider that the Landlord's email of

September 8, 2018 altered the agreement made on September 7, 2018, particularly in light of the Landlord's evidence that no further discussions were held with the Tenant about the pet deposit after September 7, 2018 and no further discussions were held at all with the Tenant after the first pet deposit payment on October 1, 2018.

As the Parties have been found to have agreed to a completion date for the payment of the pet deposit for some months away I find that the Landlord has not substantiated that the Tenants did not pay the pet deposit as required by the amended tenancy agreement term for the payment of the pet deposit. I find that the Notice is therefore not valid for its stated terms. The Tenants are entitled to a cancelation of the Notice and the tenancy continues.

Conclusion

The Notice is cancelled and of no effect.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the Act.

Dated: November 02, 2018

Residential Tenancy Branch