



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, FFT

Introduction

This teleconference hearing was scheduled in response to an application by the Tenant under the *Residential Tenancy Act* (the “Act”) to cancel a One Month Notice to End Tenancy for Cause (the “One Month Notice”), and for the recovery of the filing fee paid for this application.

The Tenant and the Landlord were both present for the duration of the teleconference hearing. The Landlord confirmed receipt of the Notice of Dispute Resolution Proceeding package and a copy of the Tenant’s evidence by registered mail. The Tenant confirmed receipt of the Landlord’s evidence but stated that it was received one day before the hearing. The Landlord agreed that his evidence package was provided to the Tenant the day before the hearing.

The documents in the Landlord’s evidence package were reviewed and the Tenant confirmed that she had already seen most of the documents, with the exception of photos and a letter from a veterinary office, which she stated she only had time to review briefly.

As stated in the rule 3.15 of the *Residential Tenancy Branch Rules of Procedure*, the respondent’s evidence package must be served to the applicant at least 7 days prior to the hearing. The parties were notified to inform me during the hearing if there was any evidence brought forward by the other party that they hadn’t received or that they had not had a chance to review.

As the Tenant referenced the Landlord’s photos and the letter from the veterinary office during her testimony, I find that she had reviewed this information and accordingly that

accepting the evidence of both parties would not unfairly prejudice either party, despite the short timeframe provided for the Tenant to review the Landlord's evidence.

All parties were affirmed to be truthful in their testimony and were provided with the opportunity to present evidence, make submissions and question the other party.

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.

Issues to be Decided

Should the One Month Notice to End Tenancy for Cause be cancelled?

If the One Month Notice to End Tenancy for Cause is upheld, is the Landlord entitled to an Order of Possession?

Should the Tenant be awarded the recovery of the filing fee paid for the Application for Dispute Resolution?

Background and Evidence

The tenancy agreement was submitted into evidence and the parties also confirmed the details of the tenancy. The tenancy began on September 1, 2016 for a monthly rent of \$800.00, due on the first day of each month. A security deposit of \$400.00 was paid at the outset of the tenancy.

The Landlord also submitted a tenancy agreement addendum into evidence which states that pets are negotiable. The Tenant confirmed that it was her understanding that pets were negotiable when she entered into the tenancy agreement.

The Landlord provided testimony that he served the Tenant in person with a One Month Notice on October 22, 2018. The One Month Notice, dated October 20, 2018, was submitted into evidence and states the following as the reason for ending the tenancy:

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

Further details were provided as follows:

Pets in cabin (Rabbits). There is a no pet policy in the cabin. 9/27/2018 a letter was written to the tenant to remove the rabbits. As of today's date they are in the cabin.

(Reproduced as written)

The effective end of tenancy date of the One Month Notice was stated as November 30, 2018. The Tenant confirmed receipt of the One Month Notice on October 22, 2018. She applied to dispute the notice on October 29, 2018.

The Landlord testified that the tenancy agreement states that pets are negotiable and while his issue is not with the Tenant having rabbits, it is about her keeping them inside the rental unit. He stated that in April 2017 he gave a rabbit to the Tenant to be kept in a hutch outside the rental unit. He referred to a text message submitted into evidence in which the Tenant confirms the hutch is ready and therefore she is ready for the rabbit.

The Landlord stated that the Tenant got a second rabbit and when questioned why she was keeping both rabbits inside, the Tenant informed him that the rabbits were being kept inside until vaccinated, due to being at risk for a virus. The Landlord submitted into evidence a letter from a veterinary clinic stating that rabbits can go outside approximately two weeks after receiving vaccinations and confirmed the cost of the vaccinations.

The Landlord stated that there was damage inside the rental unit caused by the rabbits in the home. Although the repairs have since been completed, he is worried about risk of further damage to the rental unit with the rabbits residing inside. He stated that since the Tenant was preparing an outdoor hutch for the rabbits, it was his understanding and request that they were to be kept outside.

The Landlord stated that he sent a letter of warning to the Tenant regarding the rabbits. The letter dated September 27, 2018 was submitted into evidence by both parties. The letter states that the rabbits need to be kept outside and that he did not provide permission for them to be kept inside. The letter also notes that at least \$2,000.00 of damage was caused by the rabbits for which the Tenant will be responsible.

The Tenant testified that the Landlord gave her a rabbit in April 2017 and never advised her that it needed to be kept outside. She did have a hutch outside but stated that she got a second rabbit and the hutch was too small. She stated that she had the rabbits

inside for more than a year without issue. The Tenant stated that the Landlord was aware the rabbits were inside as he had been in the rental unit during that time.

The Tenant further testified that the damage in the rental unit was fixed and approved by the Landlord after an inspection. She stated that the rabbits are now kept in a pen inside, that does not allow for damage on the floor or for them to get out of the pen to cause damage elsewhere in the rental unit. A photo of the rabbit pen was submitted into evidence.

The Tenant confirmed that she received the letter dated September 27, 2018 from the Landlord. She wrote a letter in response that was also included as evidentiary material. The Tenant's response letter, dated October 3, 2018, disputes the Landlord's allegations of damage and notes that any minor repairs needed in the rental unit had been completed.

The letter also states that the Tenant was recommended to keep the rabbits inside by her veterinarian due to risk of a harmful virus. The letter further states that the Landlord did not request that the rabbits be kept outside and explains that she keeps them in an indoor pen when not home to supervise them.

The Tenant also submitted a letter dated September 12, 2018, in which she wrote to the Landlord explaining that he gave her a rabbit as well as offered her a second rabbit. Although not able to take on a second rabbit at that time, the Tenant states in the letter that she took this as the Landlord's permission to have a second pet. The letter further states that the Landlord did not request a pet damage deposit.

The Landlord stated that he was not aware that the rabbits had been inside for a year and only became aware of this around May 2018.

Analysis

Section 47(4) of the *Act* states that a tenant has 10 days in which to dispute a One Month Notice. As the Tenant received the notice on October 22, 2018 and applied to dispute the notice on October 29, 2018, I find that she applied within the timeframe provided under the *Act*. As such, the matter before me is to determine if the reason for the One Month Notice is valid.

As stated by rule 6.6 of the *Rules of Procedure*, when a tenant applies to dispute a notice to end tenancy, the onus is on the landlord to prove, on a balance of probabilities that the reason for the notice is valid.

The One Month Notice was issued pursuant to Section 47(1)(h) which states the following:

- (h) the tenant
 - (i) has failed to comply with a material term, and
 - (ii) has not corrected the situation within a reasonable time after the landlord gives written notice to do so

Residential Tenancy Policy Guideline 8: Unconscionable and Material Terms provides a definition of 'material term' in part as the following:

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.

Further explanation of a material term is provided in the Policy Guideline as follows:

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.

While the tenancy agreement addendum notes that pets are negotiable, and both parties confirmed their understanding of this when entering into the tenancy agreement, I do not find sufficient evidence to establish that both parties understood that it was a material term of the tenancy to not have pets in the rental unit.

First, as pets were 'negotiable', this lends itself to the probability that this is not a material term in which even a trivial breach would lead to the end of the tenancy. Secondly, I find the fact that the Landlord provided the Tenant with a pet further evidence that having a pet would not be a breach of a material term of the tenancy.

Although the parties are not in agreement as to whether the Tenant was instructed to keep the rabbits outside, I am not satisfied that having pets in the rental unit is a

material term of the tenancy agreement and find insufficient evidence to establish that it is a material term, or that both parties understood it to be such.

Therefore, I find that the Landlord, who had the burden of proof in this matter, did not establish that the tenancy was ended due to a breach of a material term of the tenancy. Accordingly, I find that the one reason provided on the One Month Notice is not valid. The One Month Notice dated October 20, 2018 is hereby cancelled and of no force or effect. This tenancy continues until ended in accordance with the *Act*.

As the Tenant was successful in her application to cancel the One Month Notice, I award her the recovery of the filing fee in the amount of \$100.00, pursuant to Section 72 of the *Act*. The Tenant may deduct \$100.00 from her next monthly rent payment.

Conclusion

The One Month Notice dated October 20, 2018 is cancelled and of no force or effect. This tenancy continues until ended in accordance with the *Act*.

Pursuant to Section 72 of the *Act* the Tenant may deduct \$100.00 one time from the next monthly rent payment as recovery of the filing fee paid for the Application for Dispute Resolution.

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: December 07, 2018

Residential Tenancy Branch