



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding WALL FINANCIAL CORP
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC

Introduction

This hearing dealt with the tenant's application pursuant to the Residential Tenancy Act (the "*Act*") for:

- Cancellation of the landlord's One Month Notice to End Tenancy for Cause (the "One Month Notice") pursuant to section 47.

The tenant appeared and CR appeared on behalf of the landlord as the landlord's representative. Both parties were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

The landlord acknowledged receipt of the Notice of Hearing and Application for Dispute Resolution. Both parties acknowledged that they received the other party's evidence package. No issues of service were raised. I find all parties were served in accordance with the *Act*.

Both parties were informed of Section 55 of the *Act* which requires, when a tenant submits an Application for Dispute Resolution seeking to cancel a One Month Notice to End Tenancy for Cause issued by a landlord, I must consider if the landlord is entitled to an order of possession if the Application is dismissed and the landlord has issued a notice to end tenancy in compliance with the *Act*.

Issue(s) to be Decided

Is the tenant entitled to cancellation of the One Month Notice pursuant to section 47 of the *Act*?

Background and Evidence

The landlord testified that the tenancy agreement started on October 1, 2015 with a monthly rent of \$760.00 per month. A copy of the tenancy agreement was submitted as evidence.

The tenancy agreement has a provision regarding pets which states:

18. PETS. The tenant shall not keep or allow to be kept any pets, such as dogs, or cats... Providing the tenant meets the landlord's criteria, **with prior written permission and the tenant providing the landlord with a deposit and executing the landlord's Pet Agreement**, the landlord may give his permission for the tenant to have a pet ... The landlord's pet policy is a material term of the tenancy agreement and if the landlord gives notice to the tenant to correct any breach, and the tenant fails to comply, the landlord had a right to end the tenancy...

The landlord testified that the parties executed a Pet Addendum with the tenancy agreement that stated that the tenant was permitted one dog (referred to as "Dog #1" herein) in the rental unit which was named in the Pet Addendum and three cats. The landlord testified that the tenant paid a \$380.00 pet damage deposit to the landlord.

The Pet Addendum had a term which stated that:

Tenant(s) agree that the permission under this addendum relates only to the pet(s) named and described above. If the tenant chooses to care for a pet other than the pet(s) listed on this addendum, the tenant(s) must acquire written approval from the landlord. Housing pets without permission from the landlord is in violation of the Residential Tenancy agreement.

The landlord testified that they received a letter from the tenant dated November 7, 2018 stating that the tenant had found a replacement dog to replace Dog #1 who had passed away. The landlord testified that they did not agree to let the tenant bring a replacement dog into the rental unit. The landlord testified that they sent a letter to tenant dated November 9, 2018 stating that they do not give the tenant permission to bring the new dog into the rental unit and, if the tenant does bring a new dog into the rental unit, she is risking the termination of her tenancy. A copy of the letter was submitted as evidence.

The landlord testified that they sent the tenant a notice on November 15, 2018 stating that it had come the landlord's attention that the tenant had brought the new dog into the rental unit and the notice advised the tenant that her tenancy would be terminated if the dog was not removed by November 21, 2018. A copy of the notice was submitted as evidence.

The landlord testified that they issued the One Month Notice and posted it on the tenant's door on December 5, 2018. A copy of the One Month Notice and a witnessed proof of service of the notice were submitted as evidence.

The notice stated that the landlord was seeking termination of the tenancy because the tenant had breached a material term of the tenancy agreement. The One Month Notice stated the following as details for reasons for issuing the notice to end tenancy:

November 7th The tenant took upon herself to get a dog without written permission from the landlord. Tenant is in Breach of Pet Agreement and Tenancy agreement. [sic]

Witnesses SD and RD testified on behalf of the landlord. Both witnesses testified that the landlord's representative, CR, was a good landlord.

The tenant testified that the landlord had previously provided verbal permission that the tenant could get a replacement dog if Dog #1 passed away. The landlord denied that such verbal permission was given.

The tenant testified that the replacement dog (referred to as "Dog #2" herein), is very similar to Dog #1. She testified that the pets were half siblings and that Dog #1 was a Maltese poodle whereas Dog #2 is a Maltese schnauzer. She testified that both pets are small dogs and they both have a similar sweet and mild temperament.

The tenant also testified that both of the pets are service animals. The tenant testified that she has medical conditions which requires emergency access to medications. The tenant testified that the pets are both trained as service animals and she believes that Dog #2 is certified as a service animal. The tenant testified that the dogs wear a vest with medications in it. The tenant testifies that if she has a medical emergency, the pets detect her distress and they bring her medication.

The tenant filed this application to cancel the One Month Notice on December 13, 2018.

Analysis

Section 47 of the *Act* allows a landlord to end a tenancy by giving notice to end the tenancy if one or more of the following applies:

- a) 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;
- b) The tenant is repeatedly late paying rent;
- c) There are an unreasonable number of occupants in a rental unit;
- d) The tenant or a person permitted on the residential property by the tenant has
 - i. Significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property,
 - ii. Seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant, or
 - iii. Put the landlord's property at significant risk;
- e) The tenant or a person permitted on the residential property by the tenant has engaged in illegal activity that
 - i. Has caused or is likely to cause damage to the landlord's property,
 - ii. Has adversely affected or is likely to adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant of the residential property, or
 - iii. Has jeopardized or is likely to jeopardize a lawful right or interest of another occupant or the landlord;
- f) The tenant or a person permitted on the residential property by the tenant has caused extraordinary damage to the rental unit or residential property;
- g) The tenant does not repair damage to the rental unit or other residential property, as required under section 32(3), within a reasonable time;
- 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;**
- i) The tenant purports to assign the tenancy agreement or sublet the rental unit without first obtaining the landlord's written consent as required by section 34;
- j) The tenant knowingly gives false information about the residential property to a prospective tenant or purchaser viewing the residential property;
- k) The rental unit must be vacated to comply with an order of a federal, British Columbia, regional or municipal government authority;
- l) The tenant has not complied with an order of the director within 30 days of the later of the following dates:
 - i. The date the tenant receives the order;
 - ii. The date specified in the order for the tenant to comply with the order.

[Emphasis Added]

To dispute the One Month Notice, the tenant must file her Application for Dispute Resolution within 10 days of service of the notice pursuant to section 47(4) of the *Act*. I

find that the One Month Notice was posted on the tenant's door on December 5, 2018. Pursuant to section 90 of the *Act*, the One Month Notice is deemed to have been served three days later, on December 8, 2018. I find that the tenant has timely filed this application for dispute resolution by filing on December 13, 2018.

As set out in the Residential Tenancy Branch Rules of Procedure 6.6, if the tenant files an application to dispute a notice to end tenancy, the landlord bears the burden to prove the grounds for the notice. Accordingly, the landlord's One Month Notice must be cancelled unless the landlord can prove on a balance of probabilities that cause existed for the notice.

The issue that needs to be determined is whether the tenant breached a material term of the tenancy agreement by bringing Dog #2 into the rental unit. 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 *Residential Policy Guideline No.8 Unconscionable and Material Terms*, 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 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 the clause is material.

Residential Policy Guideline No.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.

In this matter, a term in the Pet Addendum specifically states that the tenant must obtain written permission before obtaining a new pet which is not identified on the Pet Addendum. However, the landlord has not provided adequate evidence to establish that this term is a material term of the tenancy agreement. The landlord has not presented any evidence to establish why a restriction on the replacement of a pet is a material term such that it goes to the root of the contract. I am not persuaded that that the landlord's prohibition of replacement pets is a material term of the tenancy agreement.

Accordingly, I find that the landlord is not entitled to an order for possession based upon the tenant bringing dog #2 into the rental unit. Although I find that the landlord has not satisfied their burden to establish cause to end this tenancy, I make no findings regarding whether the tenant has a right to bring Dog #2 into the rental unit. The tenant may have breached the tenancy agreement by bringing Dog #2 into the rental unit without the landlord's permission and the landlord may pursue an application for remedies for this conduct. In addition, the tenant may have the right to have Dog #2 in her rental unit as a service animal. This decision does not determine these issues. I only find herein that the landlord has not satisfied their burden of establishing on a balance of probabilities that this alleged breach was a material term of the contract.

Conclusion

I cancel the landlord's One Month Notice. This tenancy shall continue until it is ended in accordance with 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: January 30, 2019

Residential Tenancy Branch