



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, OLC, FFT

Introduction

This hearing was scheduled to deal with the tenants' Application to cancel a 1 Month Notice to End Tenancy for Cause and requests for orders for the landlord to comply with the Act, regulations or tenancy agreement. Both parties appeared or were represented at the hearing and had the opportunity to make relevant submissions and to respond to the submissions of the other party pursuant to the Rules of Procedure.

The allotted hearing time was spent hearing the parties' respective arguments with respect to 1 Month Notice to End Tenancy for Cause and whether it should be upheld or cancelled.

The tenants' requests for orders for compliance were not addressed. I have severed the tenants' request for orders for compliance from this Application pursuant to the discretion afforded me under Rule 2.3 of the Rules of Procedure and dismissed that part of their Application with leave to reapply. As such, the tenants may file another Application for orders for compliance if issues they identified on their Application remain unresolved.

Issue(s) to be Decided

Should the 1 Month Notice to End tenancy for Cause dated November 4, 2018 be upheld or cancelled?

Background and Evidence

The parties entered into a tenancy agreement on July 5, 2014 for a month to month tenancy set to commence on July 24, 2014. The tenants paid a security deposit of \$550.00 and a pet damage deposit of \$550.00 at the start of the tenancy. The tenants' rent obligation at the time of this hearing was \$1,187.00 due on the first day of every month. The rental unit is a lower suite and the upper suite in the house is also tenanted.

On November 4, 2018 the landlord issued the subject 1 Month Notice to End Tenancy for Cause ("1 Month Notice") to the tenants and posted it to the door of the rental unit on November 5, 2018. The 1 Month Notice has a stated effective date of December 31, 2018 and indicates the reason for ending the tenancy is: *Breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.* The tenants filed to dispute the 1 Month Notice within the time limit for doing so.

Both parties provided me with a copy of a 1 Month Notice dated November 4, 2018; however, I noted that the content of the "Details of Cause" box that appear on the tenants' copy is different than that appearing on the landlord's copy. The landlord confirmed that he did not keep a photocopy of the 1 Month Notice that he served upon the tenant and he had made two separate Notices. Since it is the Notice that was served upon the tenants that is the subject of dispute, I informed the parties that I would only rely upon the tenants' copy.

In the "Details of Cause" box on the second page of the tenants' 1 Month Notice the landlord wrote as follows [names omitted for privacy]:

"Oct 18, 2018 [name of female tenant] confirmed they had an unauthorized pet on the premise. Oct 30, 2018 [name of male tenant] registered letter also states they are keeping an unauthorized pet. All changes to the agreement must be in advance, in writing and permission given by landlord."

It is undisputed that the tenants had one pet dog at the start of the tenancy and acquired a second dog in the summer of 2018. Both parties referred to a telephone conversation between the male tenant and the landlord in July 2018 where the subject of the tenants acquiring a second dog was raised. The landlord was of the position the tenant was asking permission to get a second dog. The tenant was of the position he was notifying the landlord of their intention to get a second dog. In either case, the

landlord called the tenant back in the days that followed, somewhere between a day and a week later, and told the tenant they could not have a second dog. The tenants were of the position the landlord could not deny them the right to acquire a second dog and proceeded to purchase a second dog.

In October 2018 the landlord and the male tenant had an argument over the phone concerning the landlord's intention to send a handyman to the rental unit; the landlord's notice of entry, or lack of proper notice of entry; and, the landlord trying to restrict the tenants' ability to have a second dog. The landlord asserted that it was during this argument that the landlord learned the tenants had gone ahead and acquired a second dog.

On October 18, 2018 the landlord and his wife were at the residential property to de-moss the roof and during this visit the landlord's wife observed the female tenant with two dogs on the residential property.

On October 19, 2018 the landlord issued a breach notice to advise the tenants that they had an unauthorized pet in the rental unit; that the landlord considered this to be a breach of a material term of the tenancy agreement; and, the tenants had until November 3, 2018 to "remove unapproved pet".

On October 25, 2018 the tenants orally confirmed to the landlord that they would not be removing the second dog. The tenants also sent a letter to the landlord via registered mail which was received by the landlord on October 30, 2018. The tenants' letter refers to term 18 of the tenancy agreement that is entitled "PETS" and the tenants provide the landlord with their argument that the term was not amended and they are not restricted to having only one pet. In the letter, the tenants go on to indicate they had mentioned getting a second dog when the tenancy formed.

Since the tenants did not remove the second dog from their rental unit by the deadline of November 3, 2018 the landlord proceeded to issue the subject 1 Month Notice on November 4, 2018.

Landlord's position

The landlord points to term 18 in the tenancy agreement as being the material term the tenants have breached. Below, I have reproduced the term 18 of the tenancy agreement:

8. **PETS.** Unless specifically permitted in writing in advance by the landlord, the tenant must not keep or allow on the residential property any animal, including a dog, cat, reptile, or exotic animal, domestic or wild, fur bearing or otherwise. Where the landlord has given his permission in advance in writing, the tenant must ensure that the pet does not disturb any person in the residential property or neighbouring property, and further the tenant must ensure that no damage occurs to the rental unit or residential property as a result of having or keeping the pet. This is a material term of this Agreement. If any damage occurs caused by the pet, the tenant will be liable for such damage and will compensate the landlord for damages, expenses, legal fees, and/or any reasonable costs incurred by the landlord. Further, if the landlord gives notice to the tenant to correct any breach and the tenant fails to comply within a reasonable time, the landlord has a right to end the tenancy along with making the appropriate claims against the tenant. Having regard to the potential safety issues, noise factors, health requirements, and mess, the tenant will not encourage or feed wild birds or animals at or near the residential property.

Any term in this tenancy agreement that prohibits or restricts the size of a pet, or that governs the tenant's obligations regarding the keeping of a pet on the residential property is subject to the rights and restrictions under the *Guide Animal Act*.

The landlord submitted that the parties did not amend their terms of tenancy which means the tenants had to have obtained advance written consent from the landlord in order to acquire the second dog so as to avoid breaching term 18 of their tenancy agreement.

The landlord confirmed that he gave the tenants permission to have their first dog and that dog was indicated on their application for tenancy and that it is the second dog the tenants acquired in 2018 that the landlord considers to be "unapproved" and acquired without advance written consent of the landlord.

As for giving the tenants advance written permission to have the first dog the landlord as stipulated in term 18, the landlord testified that he had given the advance written permission by completing the pet damage deposit section of the tenancy agreement. The landlord pointed to term 7 of the tenancy agreement as being the advance written permission for the tenants to have the first dog. Term 7 is written as follows:

SECURITY DEPOSIT AND PET DAMAGE DEPOSIT.

A Security deposit in advance in the amount of \$ 550 paid on JULY 5, 2014.
A Pet Damage deposit in the amount of \$ 550 paid on JULY 5, 2014.

The landlord was of the position that completing the pet damage deposit section of the tenancy agreement formed the advance written permission for the tenants to have only the one dog they had listed on their tenancy application. The landlord was of the

position that reference to pet is singular and that he would not have entered into a tenancy with the tenants if they had more than one pet as he has never permitted more than one pet in the small suite.

The landlord took issue with the fact he told the tenants they could not have a second dog when they raised the issue in July 2018 and they went ahead and disregarded his instruction.

Tenants' position

The tenants pointed out that term 18 refers to pets in the plural form; that they obtained permission to have a pet at the start of the tenancy; they paid the pet damage deposit and there were no other terms in the tenancy agreement, or by way of an addendum that restricted the number, size or type of pets they could have. The tenants are of the position they have not breached a material term of their tenancy agreement and they were shocked when the landlord told them they could not have a second dog especially considering they told the landlord when the tenancy formed that they may get a second dog.

The tenants submitted that their pet dogs are very small with the second dog weighing approximately 10 pounds. The tenants submit that the dog will do minimal damage, if any at all, and if the dogs do cause damage the tenants will rectify any damage. The tenants submitted that having the second dog has not created a nuisance or complaints from their neighbours.

Relevance documents provided for my review by both parties included a copy of the tenancy agreement; the breach notice of October 19, 2018; the tenants' written response of October 30, 2018; text messages exchanged between the parties; and, the subject 1 Month Notice.

The tenancy agreement has a total of 44 terms and there is no addendum that accompanies the tenancy agreement.

Analysis

Where a notice to end tenancy comes under dispute, the landlord bears the burden to prove the tenancy should end for the reason(s) indicated on the Notice. The stated reason on the notice is consistent with section 47(1)(h) where a landlord may end a tenancy where:

- (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;

The material term of the tenancy agreement the landlord asserts the tenants have breached is term 18 of the tenancy agreement, entitled “PETS”. The most relevant part of term 18 that the landlord relies upon concerns the requirement that the landlord must give advance written permission for the tenants to keep any animal on the property. The relevant part of term 18 reads:

“Unless specifically permitted in writing in advance by the landlord, the tenant must not keep or allow on the residential property any animal, including a dog, cat reptile, or exotic animal, domestic or wild, fur bearing or otherwise.”

In this case, it is undisputed that the tenants had one dog at the start of their tenancy in 2014 and were permitted to have that dog, and they acquired a second dog in 2018. It is also undisputed that on October 19, 2018 the landlord gave the tenants written notice that he considered the tenants to have an unauthorized pet on the premises; that the landlord considered the acquisition of an unauthorized pet to be a breach of a material term of the tenancy agreement; and, that the tenants had until November 3, 2018 to remove the unauthorized pet. It is also undisputed that the tenants refused to remove one of the dogs and are keeping a total of two dogs on residential property. However, the parties provided opposing positions and arguments as to whether the tenants’ acquisition of a second dog is a breach of a material term of the tenancy agreement. Accordingly, I find the issue to determine is whether the tenants’ acquisition of a second dog is grounds for ending the tenancy due to a breach a material term of the tenancy agreement.

Residential Tenancy Branch Policy Guideline 8: *Unconscionable and Material Terms* provides information and policy statements concerning material terms and ending a tenancy for breach of a material term. With respect determining whether a term in a tenancy agreement is a material term, the policy guideline states:

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.

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.

The question of whether or not a term is material is determined by the facts and circumstances surrounding the creation of the tenancy agreement in question. It is possible that the same term may be material in one agreement and not material in another. Simply because the parties have put in the agreement that one or more terms are material is not decisive. During a dispute resolution proceeding, the Residential Tenancy Branch will look at the true intention of the parties in determining whether or not the clause is material.

If a landlord does not act in accordance with a term in the tenancy agreement then it can hardly be argued that the term is a material term at a later date. Since the tenants in this case had one pet dog when the tenancy formed, and the landlord confirmed that the tenants had consent to keep that dog on the residential property, I look to the landlord's actions concerning giving permission for that dog in 2014 and whether his actions were consistent with term 18 of the tenancy agreement.

Where a tenancy agreement requires that a landlord give advance written permission for a tenant to do something, I would expect to see the advance written permission clearly set out by either: creating an additional term in the tenancy agreement or an addendum whereby permission is expressly given; or, permission is expressly given by the landlord in a separate letter or document. The tenancy agreement presented to me does not include any additional term in it, or by way of an addendum, that reflects the landlord expressly gave the tenants permission to have the pet they had when the tenancy formed in 2014. Nor, was there a separate letter or document giving the tenants permission to have their first dog. It appears to me as though the landlord did

not give advance written permission for the tenants to have the first dog and in that case, I would find term 18 is not a material term.

Nonetheless, the landlord argued that in recording the payment of a pet damage deposit in term 7 of the tenancy agreement he gave advance written consent for the tenants to have the one dog they listed on their tenancy agreement. I find the landlord's reliance on term 7 as evidence that he gave advance written permission for the tenants to have only that one dog to be not insufficient and inadequate for the following reasons.

As provided in section 6 of the Act, in order for a term in a tenancy agreement to be enforceable it must be clearly written so as to clearly communicate the rights and obligations under the term. Term 7 of the tenancy agreement reflects that the tenants paid a pet damage deposit of \$550.00 on July 5, 2014. It does not indicate any restrictions on the size, number or type of pets the tenants may have which is consistent with the tenants' arguments to me.

Further, payment and acceptance of a "pet damage deposit" does not limit a tenant's ability to have only one pet. Rather, section 20(d) of the Act limits the collection of a pet damage deposit to one deposit regardless of the number of pets a tenant may have. Section 20(d) provides as follows:

20 A landlord must not do any of the following:

(d) require or accept more than one pet damage deposit in respect of a tenancy agreement, irrespective of the number of pets the landlord agrees the tenant may keep on the residential property;

While the parties made arguments as to whether terms 7 and 18 of the tenancy agreement referred to pet or pets in their singular or plural form, I find that distinction is unnecessary. As seen in term 38 of the tenancy agreement: "The singular of any word includes the plural, and vice versa".

In light of the above, I find the landlord has not satisfied me that the tenants breached a material term of the tenancy agreement as his actions were either not consistent with term 18 and pointing to term 7 of the tenancy agreement as evidence of giving advance written permission for one dog is inadequate since term 7 does not restrict the tenants' ability to have more than one pet or a particular dog. Accordingly, **I grant the tenants' request to cancel the 1 Month Notice dated November 4, 2018 and the tenancy continues at this time.**

Since the tenants were successful in their Application, I award the tenants recovery of the \$100.00 filing fee they paid for this Application. **By way of this decision, the tenants are authorized to deduct \$100.00 from a subsequent month's rent payment in satisfaction of this award and in doing so the landlord must consider the rent to be paid in full.**

Conclusion

The 1 Month Notice dated November 4, 2018 is cancelled and the tenancy continues at this time.

The tenants are awarded recovery of the filing fee and they are authorized to deduct \$100.00 from a subsequent month's rent payment in satisfaction of this award.

The tenants' request for orders for compliance against the landlord was severed from this Application under rule 2.3 of the Rules of Procedure and dismissed with leave to reapply.

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 02, 2019

Residential Tenancy Branch