



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, MNDCT, OLC, FFT

Introduction

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

- a monetary order for unpaid rent and for money owed or compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* ("Regulation") or tenancy agreement, pursuant to section 67;
- cancellation of the landlord's 1 Month Notice to End Tenancy for Cause (the 1 Month Notice) pursuant to section 47;
- an order requiring the landlord to comply with the *Act*, regulation or tenancy agreement pursuant to section 62;
- authorization to recover his filing fee for this application from the landlord pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another. The parties acknowledged receipt of evidence submitted by the other. I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure; however, I refer to only the relevant facts and issues in this decision.

Issue(s) to be Decided

Is the tenant entitled to cancel the One Month Notice to End Tenancy? If not, is the landlord entitled to an order of possession?

Is the tenant entitled to an order compelling the landlord to comply with the Act, regulation or tenancy agreement?

Is the tenant entitled to a monetary order as compensation?

Is the tenant entitled to the recovery of the filing fee for this application?

Background and Evidence

The landlord gave the following testimony. The tenancy began on March 1, 2017 with the monthly rent of \$795.00 due on the first of each month. At the outset of the tenancy the tenant provided a security deposit of \$382.50 and a pet deposit of \$382.50 for her cat. The landlord testified that the tenant has obtained a second cat without their written permission and as a result, have breached a material term of their tenancy agreement. The landlord stated that clause 18 in their tenancy agreement supports her position. The landlord testified that she issued a One Month Notice to End Tenancy for Cause on November 7, 2018 on the following ground:

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

The landlord requests an order of possession.

The tenant gave the following testimony. The tenant testified that the second cat is a therapy cat. The tenant testified that she told the landlord as far back as July 9, 2018 that she obtained the cat and it wasn't an issue. The tenant testified that there isn't a restriction on the amount of pets in their tenancy agreement but she has no intention of getting any more pets. DW testified that they have dealt with a lot of stress because of this issue and should be entitled to compensation.

Analysis

When a landlord issues a notice to end tenancy under Section 47 of the Act, the landlord bears the responsibility of providing sufficient evidence to support that claim. The landlord claims that the tenant took on a second cat without their written permission and that clause 18 in their agreement supports her position.

Section 18 of the Act addresses the issue before me as follows:

Terms respecting pets and pet damage deposits

18 (1) A tenancy agreement may include terms or conditions doing either or both of the following:

- (a) prohibiting pets, or restricting the size, kind or number of pets a tenant may keep on the residential property;
- (b) governing a tenant's obligations in respect of keeping a pet on the residential property.

(2) If, after January 1, 2004, a landlord permits a tenant to keep a pet on the residential property, the landlord may require the tenant to pay a pet damage deposit in accordance with sections 19 [*limits on amount of deposits*] and 20 [*landlord prohibitions respecting deposits*].

(3) This section is subject to the [*Guide Dog and Service Dog Act*](#).

I have reviewed the signed tenancy agreement and find that there are no conditions or stipulations in terms of how many pets a tenant is entitled to have. In addition, it's clear to me that the landlord had given the tenant permission at the outset of the tenancy to have a pet by collecting a pet deposit. Furthermore, the landlord did not dispute the tenancy testimony that she verbally requested to have another cat in July 2018. I find that the tenant obtaining a second cat is not unreasonable and not excessive. The landlord has not provided sufficient evidence to support their claim that the tenant breached a material term of the tenancy agreement and therefore I cancel the One Month Notice to End Tenancy, it is of no force or effect. The tenancy continues.

The tenant was silent as to what specific section of the Act, regulation or tenancy agreement they wish to have the landlord comply with; accordingly, I dismiss that portion of their application.

The tenant applied for an amount of \$2554.36 as compensation. However, other than the tenants stating that they should be entitled to something because of the stress involved in going through the process, they did not provide supporting documentation or testimony as to how they came to that amount and why.

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. **In order to claim for damage or loss under the Act, the party claiming the damage or loss bears the burden of proof.** The claimant must provide **sufficient evidence of the following four factors**; the existence of the damage/loss, that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party, the applicant must also show that

they followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage being claimed, and that if that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage.

I find that the tenant has not satisfied any of the four grounds as listed above. Based on the insufficient evidence before me, I dismiss this portion of her application.

As the tenant has been only partially successful in this application they must bear the cost of the filing fee.

Conclusion

The One Month Notice to End Tenancy for Cause dated November 7, 2018 is cancelled. The tenancy continues.

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 03, 2019

Residential Tenancy Branch