



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

matter regarding H & L CONDO SERVICES INC. and
[tenant name suppressed to protect privacy]

DECISION

Dispute Codes **CNC FFT**

Introduction

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

- An order to cancel a one month notice to end tenancy for cause issued pursuant to section 47; and
- Recovery of the filing fee for this application from the landlord pursuant to section 72.

Both the tenants and the landlord attended the hearing. The tenants were represented by the tenant JK ("tenant"). The landlord confirmed she received the tenant's notice of hearing package and evidence. The tenant confirmed receipt of the landlord's evidence. Although all evidence was taken into consideration at the hearing, only that which was relevant to the issues is referenced in this decision.

Issue(s) to be Decided

Is the tenant entitled to cancel a one month notice to end tenancy for cause and recover the filing fee for this application from the landlord?

Background and Evidence

The parties agree this tenancy started as a fixed term tenancy on October 1, 2017 and became a periodic tenancy effective September 1, 2018. Rent was initially set at \$2,395.00 per month and is now \$2,455.00 per month. A security deposit of \$1,197.00 was exchanged at the commencement of the tenancy and is still being held by the landlord. The tenancy agreement, provided as evidence by the tenant, indicates in

bold print “This is a non-smoking building and suite”. The tenancy agreement is silent with respect to pets.

The landlord testified the rental unit was fully refurbished with new carpeting and new fixtures at the commencement of the tenancy. On or about January 29, 2019, while investigating an issue with a shower handle, the building manager advised the landlord that the rental unit was ‘trashed’. He told the landlord that there was a dog in the rental unit. The building manager was not called as a witness by the landlord. The landlord testified she has never personally seen a dog in the rental unit, nor did she request the tenant pay a pet damage deposit following the building manager’s discovery of the dog.

The landlord testified that while there are dogs in the building, the owner of this unit does not allow pets due to allergies and the pet dander caused by animals. The landlord referenced the rental application the tenants completed prior to the commencement of the tenancy as proof that animals are not allowed. The landlord did not provide a copy of the rental application, saying she would rely on the tenant to provide this evidence.

On January 31, 2019, the landlord served the tenant with a one month notice to end tenancy for cause (“Notice”). The reason for ending the tenancy listed as grounds were:

1. breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so;
2. security or pet damage deposit was not paid within 30 days as required by the tenancy agreement;

The landlord testified that the material term was having the dog in the rental unit.

The landlord did not submit evidence of a written request to the tenant to correct a breach of a material term of the tenancy or to provide a pet damage deposit.

The tenant testified the co-tenant’s girlfriend brought her dog over for a visit on occasion, however since the landlord’s notification that dogs are not allowed, the dog visits were immediately terminated. He did not realize the extent of the landlord’s opposition to the dog visits and feels a termination of the tenancy is excessive for an issue that was immediately remedied. The tenant states the dog visits are not a significant breach of a material term of the tenancy.

Analysis

In his application, the tenant acknowledges receipt of the Notice on January 31, 2019. I find that he was served with it on January 31, 2019 in accordance with section 89 of the *Act* and filed an application to dispute it on February 4, 2019.

Section 47 of the *Act* provides that upon receipt of a Notice to End Tenancy for Cause, the tenant may, within ten days, dispute it by filing an application for dispute resolution with the Residential Tenancy Branch. If the tenant files the application, the landlord bears the burden to prove he or she has valid grounds to terminate the tenancy for cause. The landlord must show on a balance of probabilities, which is to say it is more likely than not, that the tenancy should be ended for the reasons identified in the Notice. In the matter at hand, the landlord must demonstrate the tenant (1) breached a material term of the tenancy which was not corrected within a reasonable time and (2) failed to pay a pet damage deposit within 30 days.

The landlord testified that she never saw the dog in the rental unit but relies on the evidence of the building manager who was not called to testify. Further, the landlord relies on the tenant's rental application, which was not provided as evidence, as proof that having the dog in the rental unit is a material term of the tenancy. The tenancy agreement does not include any term preventing the tenant from having pets. Lastly, the landlord testified she never requested a pet damage deposit from the tenant upon discovering there may be a pet in the rental unit.

The tenant acknowledges he had a dog visit the rental unit, however the dog's visits were immediately terminated once he knew the landlord would not allow it.

I find the landlord has not proven the tenant has breached a material term of the tenancy.

I also find the landlord has not proven the tenant failed to pay a pet damage deposit as there's no evidence one was ever requested.

The landlord has not proven the tenancy should end for the reasons stated on the Notice issued on January 31, 2019 and the tenancy will continue until ended in accordance with the *Act*.

The tenant is successful in cancelling the Notice and is entitled to recover the \$100.00 filing for from this application which will be deducted by the tenant from future rent.

Conclusion

The landlord's One Month Notice to End Tenancy for Cause is cancelled and of no further force or effect. The tenancy will continue until ended in accordance with the *Act*.

The tenants are entitled to deduct the sum of \$100.00 from future rent in satisfaction of an award for the filing fee.

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: March 18, 2019

Residential Tenancy Branch