



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

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

DECISION

Dispute Codes OPC FFL
 CNC LAT LRE OLC

Introduction

This hearing was convened by way of conference call concerning applications made by the landlord and by the tenant.

The landlord has applied for an Order of Possession for cause and to recover the filing fee from the tenant for the cost of the application.

The tenant has applied for an order cancelling a notice to end the tenancy for cause; an order permitting the tenant to change the locks to the rental unit; an order limiting or setting conditions on the landlord's right to enter the rental unit; and for an order that the landlord comply with the *Act*, regulation or tenancy agreement.

The hearing did not conclude on the first scheduled date, and at the first scheduled date I dismissed the tenant's applications for an order permitting the tenant to change the locks to the rental unit; an order limiting or setting conditions on the landlord's right to enter the rental unit; and for an order that the landlord comply with the *Act*, regulation or tenancy agreement, with leave to reapply.

The tenant and an agent for the landlord company attended the hearing and each gave affirmed testimony. The landlord also called 5 witnesses who each gave independent affirmed testimony. The parties were given the opportunity to question each other and the witnesses, and each party gave submissions.

No issues with respect to service or delivery of documents or evidence were raised, and all evidence relevant to the issuance of the One Month Notice to End Tenancy for Cause has been reviewed and is considered in this Decision.

Issue(s) to be Decided

Has the landlord established that the One Month Notice to End Tenancy for Cause was issued in accordance with the *Residential Tenancy Act*, specifically with respect to the reasons for issuing it, or should it be cancelled?

Background and Evidence

The landlord's agent testified that this fixed term tenancy began on October 1, 2015 and expired on March 31, 2016 thereafter reverting to a month-to-month tenancy, and the tenant still resides in the rental unit. A copy of the tenancy agreement has been provided as evidence for this hearing. Rent in the amount of \$816.00 per month is currently payable on the 1st day of each month and there are no rental arrears. At the outset of the tenancy the landlord collected a security deposit from the tenant in the amount of \$350.00 as well as a pet damage deposit in the amount of \$380.00, both of which are still held in trust by the landlord. The rental unit is an apartment in a complex containing 48 suites, and there are 5 buildings with 250 apartments in total on the rental property. The landlord's agent resides on the property.

The landlord's agent further testified that on March 28, 2019 the landlord caused the tenant to be served with a One Month Notice to End Tenancy for Cause, which was posted to the door of the rental unit. A copy has been provided for this hearing and it is dated March 27, 2019 and contains an effective date of vacancy of May 31, 2019. The reasons for issuing it state:

- Tenant or a person permitted on the property by the tenant has:
 - seriously jeopardized the health or safety or lawful right of another occupant or the landlord;
- Tenant or a person permitted on the property by the tenant has engaged in illegal activity that has, or is likely to:
 - adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant;
- Breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.

With respect to the first reason for ending the tenancy, the landlord's agent testified that the tenant assaulted an employee of the landlord, and continuously leaves food on the rental property for animals and birds. There was a skunk issue in the area, and the tenant was feeding it and the landlord had to seal off the area and have it removed. Now the complex is bombarded with mice attracted by the tenant and they enter homes. Feeding birds has caused bird feces on balconies.

No illegal activity is alleged.

With respect to the third reason for ending the tenancy, the landlord's agent testified that the tenant has been given multiple written warnings about breaching a material term of the tenancy agreement, and copies have been provided for this hearing. They include warnings about feeding wildlife, having another dog without permission, having her dog on a leash and about allowing unit inspections.

The tenancy agreement states, in part:

18. PETS. The tenant shall not keep or allow to be kept, any pets, such as dogs, or cats, reptiles or exotic animals, domestic or wild, fur bearing or otherwise. 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."

It also states that it is a material term of the tenancy agreement. The Pet Agreement states, in part:

"3. Tenant(s) agree that they must have full control of their pets at all times." and,

"Tenant(s) agree that the permission granted 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 the written permission from the landlord is in violation of the Residential Tenancy Agreement." and,

"Tenant(s) are fully aware that this pet agreement is a material term of the residential tenancy agreement. A breach of this agreement may result in a notice to end tenancy under section 47(h) of the Residential Tenancy Act as amended. Tenant(s) are fully aware that the agent of the landlord, the Resident Manager, reserves the right to revoke the permission previously granted for this pet, should this agreement be breached."

It is signed by the tenant and the landlord's agent, and names 3 pets. The landlord's agent testified that the tenant consistently and almost every day has her dog off-leash and other tenants have called the landlord's agent asking if there has been a policy change because they've seen the tenant's dog off leash. Further, tenants are required to get permission to get other pets, but the tenant obtained another dog saying it was a Service Dog, but refused to provide a license. If the dog was a Service Dog, the landlord cannot refuse, however there have also been numerous written warnings about both dogs being off leash and having additional pets.

The landlord's first witness (BJ) testified that she has been living at the rental complex for 3 years.

Last summer the witness saw an employee of the landlord empty a dust pan on the right side of the dumpster and heard someone yelling. A person, who the witness thought was a street person, was inside the dumpster and threw a bag of poop and 2 garbage bags at the landlord's employee. The witness called the manager asking that police be called.

The witness has also seen the tenant go into the bushes below windows feeding animals for the last 3 years. There are a lot of raccoons and coyotes in the area.

The landlord's second witness (AC) testified that she is an employee of the landlord, and after sweeping the lobby she took the dustpan to the dumpster and saw the tenant throwing stuff out of it. The witness emptied the dustpan at the far corner and as she was walking away, the tenant called her a stupid f'g bitch and threw a bag of dog poop at her. Then a grocery bag of garbage hit the witness' head. The witness called the manager and police were called.

The witness has also cleaned up random dog poop at the tenant's door and around the corner many times. The witness has seen the tenant walk out the door and then there would be fresh dog poop on the floor.

The landlord's third witness (SD) testified that she is a tenant in the rental complex and also does the vacuuming for another building.

The witness provided evidence at a previous hearing, and testified that she had taken photographs of the tenant and her dog to prove the dog is off leash. The witness also put a note on the tenant's door to clean up the poop in the hall in front of her door.

The witness has also provided a written statement dated February 28, 2019 describing an incident with the tenant, which also states that the tenant has made it no longer possible for the witness to feel safe.

The landlord's fourth witness (TR) testified that she is an employee of the landlord and conducted 250 inspections on the rental properties, along with another employee. When inspecting this rental unit, the tenant refused to allow the closet to be inspected, saying it was not proper procedure. The witness opens and closes everyone's closets just to ensure there are no illegal drugs. The tenant also refused to allow the patio to be inspected, which was covered with blankets and stuff. Due to some obvious pet damage by the door and a very foul smell, a follow-up inspection was scheduled, but that was not completed. A letter was on the landlord's office door from the tenant refusing entry and making accusations that the witness had rummaged through the tenant's purse and medication, which is totally false, and the witness hasn't entered the rental unit since.

The landlord's fifth witness (DD) testified that she is a landscaper for the landlord company, and continually finds water containers and wet cat food everywhere, which makes her job hard to do. A lot of the time, they are under shrubs and the witness has to get under them to retrieve it. She has seen the tenant put the items there and has taken photographs, and has seen the tenant's dog off leash.

The witness was also present at an inspection at the rental unit with the landlord's fourth witness (TR), and testified that at no time did either of them see any purse or medications. The witnesses tried to open the closet doors, but the tenant shut it immediately and wouldn't let the inspection continue.

The tenant testified that a lot of the evidence given by the landlord is either false or highly inflated, and submits that the evidence in comparison to the testimony is different.

There have been previous hearings and the allegations made in this notice to end the tenancy have already been ruled upon, including the allegation of feeding wildlife.

The tenant also testified that she has not assaulted any tenants, but has been assaulted by another tenant causing her to be hospitalized for almost a month.

The landlord is using other tenants and staff of the landlord to try to push the tenant out of the rental complex when she hasn't done anything wrong. RCMP have been involved, and the landlord's agent has been warned about criminal harassment.

When asked about the Pet Agreement, the tenant replied that she doesn't have a copy in front of her. When asked if dogs are to be on a leash at all times on the rental property, the tenant gave the same response. When asked if the Pet Agreement relates only to pets named thereon, and if the tenant asked for permission, the tenant replied that the matter had already been ruled upon.

The tenant also relies on the evidentiary material she has provided for this hearing.

Analysis

Where a tenant disputes a notice to end a tenancy given by a landlord, the onus is on the landlord to establish that it was given in accordance with the *Residential Tenancy Act*, which can include the reason(s) for issuing it. I have reviewed the One Month Notice to End Tenancy for Cause, and I find that it is in the approved form and contains information required by the *Act*. The reasons for issuing it are in dispute.

I advised the parties that I would review the previous Decisions to ensure that I do not make any findings of fact or law that have already been adjudicated upon. The first one quoted by the tenant is dated October 24, 2016 concerning the tenant's application to cancel a notice to end the tenancy for cause and for monetary compensation. The facts are not at all related to the facts contained in this hearing.

A hearing on August 27, 2018 resulted in a Decision dated August 29, 2018 wherein the tenant had applied for an order cancelling a One Month Notice to End Tenancy for Cause dated June 25, 2018. The Analysis portion of the Decision states, in part:

"The landlord explained the 1 Month Notice was issued due to; ongoing issues related to the tenant's reported feeding of wildlife; an incident which occurred between the tenant and fellow building occupant K.M.; reports the tenant's rental unit was excessively smelly, and because the tenant had refused entry to a pest control company."

The only similarity is the allegation of feeding wildlife, which the parties agreed at that time, was behaviour that had stopped after warning, and the notice to end the tenancy was cancelled.

The tenant applied again for an order cancelling a One Month Notice to End Tenancy for Cause and a hearing on January 22, 2019 resulted in a Decision dated January 30, 2019. The Arbitrator found that the landlord had not provided adequate supporting evidence to establish that bringing in a second dog was a material term of the tenancy agreement, and the One Month Notice to End Tenancy for Cause was cancelled. However, the Decision also states:

"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."

In this case, I agree that feeding wildlife was an issue in a previous hearing but the parties had agreed that the tenant had stopped doing so after being warned. That is a new allegation, not one that has already been adjudicated upon.

I found the tenant to be evasive during cross examination, and I find that the tenant is fully aware of what the Pet Agreement states, including having full control of pets at all times. The landlord's position is that it means dogs must be leashed at all times on the rental property, and the tenant does not dispute that.

I have also read the entire submission of the tenant, emphasizing that almost all of the evidence submitted by the landlord is not only hearsay but also patently false. The most compelling testimony and evidence is the alleged assault on an employee of the landlord with a bag of poop and another being thrown at her head. That is not hear-say evidence and has not previously been adjudicated upon. The landlord has provided witnesses who have testified under affirmation that the assault took place, and the tenant has provided absolutely no evidence that it didn't take place, other than her written submission stating that it was the tenant who was assaulted requiring medical attention for an eye injury when the dust pan was emptied into the garbage bin. No where in the submission does the tenant deny throwing the bags at the witness.

I find that the landlord has established that the tenant has seriously jeopardized the health or safety or lawful right of another occupant or the landlord or an agent of the landlord, and I dismiss the tenant's application to cancel the One Month Notice to End Tenancy for Cause.

The *Residential Tenancy Act* specifies that where I dismiss a tenant's application to cancel a notice to end a tenancy given by a landlord, I must grant an Order of Possession in favour of the landlord, so long as the notice given is in the approved form. Having found that it is in the approved form and contains information required by the *Act*, I grant an Order of Possession in favour of the landlord effective at 1:00 p.m. on May 31, 2019 as stated in the Notice.

Since the landlord has been successful with the application, the landlord is also entitled to recovery of the \$100.00 filing fee, and I grant a monetary order in that amount and I order that the landlord be permitted to keep that amount from the security deposit held in trust, or may otherwise recover it.

Conclusion

For the reasons set out above, the tenant's application is hereby dismissed.

I hereby grant an Order of Possession in favour of the landlord effective at 1:00 p.m. on May 31, 2019.

I further grant a monetary order in favour of the landlord as against the tenant pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$100.00 and I order that the landlord be permitted to keep that amount from the security deposit held in trust, or may otherwise recover it.

This order is final and binding and may be enforced.

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: May 29, 2019

Residential Tenancy Branch