



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes For the tenant: CNC, RP, MNDCT, FFT
For the landlord: OPC, MNDCL, FFL

Introduction

This hearing was convened as a result of the cross applications of the parties for dispute resolution under the Residential Tenancy Act (“Act”).

The tenant applied for an order cancelling the landlord’s One Month Notice to End Tenancy for Cause (“Notice”), an order requiring the landlord to make repairs to the rental unit, a monetary order for money owed or compensation for damage or loss under the Act, the tenancy agreement or the regulation, and for recovery of the filing fee paid for this application.

The landlord applied for an order of possession for the rental unit pursuant to the Notice, for a monetary order for money owed or compensation for damage or loss under the Act, the tenancy agreement or the regulation, and for recovery of the filing fee paid for this application.

The tenant and the landlord attended the hearing, the hearing process was explained to the parties and an opportunity was given to ask questions about the hearing process.

At the outset of the hearing, each party confirmed receipt of the other’s evidence.

Thereafter the participants were provided the opportunity to present their evidence orally, refer to relevant evidence submitted prior to the hearing, question the other party, and make submissions to me.

I have reviewed all oral and written evidence before me that met the requirements of the Dispute Resolution Rules of Procedure (the “Rules”); however, I refer to only the relevant evidence regarding the facts and issues in this decision.

Preliminary Issues

I have determined that the portion of the tenant's application dealing with a request for an order requiring the landlord to make repairs to the rental unit and a monetary order for money owed or compensation for damage or loss under the Act is unrelated to the primary issue of disputing the Notice.

I have also determined that the portion of the landlord's application dealing with a request for a monetary order for money owed or compensation for damage or loss under the Act is also unrelated to the primary issue of enforcing the Notice.

As a result, pursuant to section 2.3 of the Rules, I have severed the tenant's and the landlord's Applications and dismissed that portion of the parties' request for said relief, with leave to reapply.

The hearing proceeded only upon the tenant's application to seeking cancellation of the Notice issued by the landlord and on the landlord's application seeking enforcement of the Notice.

As another preliminary issue, I have removed the names of the tenant's sons that he listed in his application for dispute resolution from any further consideration, as their names are not listed on the written tenancy agreement. I find they are not a legal party to this dispute.

Issue(s) to be Decided

Is the tenant entitled to an order cancelling the landlord's Notice and to recovery of the filing fee paid for this application?

Is the landlord entitled to an order of possession for the rental unit based upon her Notice and to recovery of the filing fee paid for this application?

Background and Evidence

The landlord submitted a copy of the written tenancy agreement showing that this one year, fixed term tenancy began on May 5, 2018, and monthly rent is \$2,150.00, due on the first day of the month.

Pursuant to the Rules, the landlord proceeded first in the hearing and testified in support of issuing the tenant the Notice. The parties submitted a copy of the Notice, showing it was dated July 20, 2019, and said it was delivered by attaching it to the tenant's door on that date, listing an effective end of tenancy on July 20, 2019. The parties agreed that the Notice date of July 20 was an error, as it should have been June 20, 2019.

The cause listed on the Notice as the reason for which the landlord is seeking to end this tenancy is that the tenant has breached a material term of the tenancy agreement which was not corrected within a reasonable time after written notice to do so.

The landlord's additional relevant documentary evidence included a copy of a "breach" letter from the landlord to the tenant.

In support of their Notice, the landlord submitted that the tenant has breached a material term of the written tenancy agreement, specifically paragraph 3, which states that the tenant is not allowed to keep pets or animals in or about the property without the prior written permission of the landlord.

The landlord submitted that the tenant brought two puppies onto the premises without written permission and the tenant has not removed them, despite her written warning letter.

The landlord agreed that she had a discussion with the tenant at the beginning of the tenancy about the tenant's consideration of bringing puppies in, but that it was only a loose conversation and not authorized.

The landlord agreed that the puppies were brought in early in the tenancy, but now the dogs are aggressive and not to be trusted.

In response to my inquiry, the landlord submitted that she was not sure paragraph 3 concerning pets on the premises was a material term, but there is a danger.

Tenant's response-

The tenant submitted that when he began looking around for a place to rent and made inquiries, the inquiries always said he needed a house allowing pets. The tenant submitted that he first communicated with the landlord's daughter, who said pets would be allowed in this tenancy.

When the tenancy first began, the landlord offered the solarium for the puppies to stay in, but she has now put that off limits. The tenant submitted that the dogs are outdoor pets and do not come into the house, except for the occasional time when they go to his sons' rooms, as they are his boys' dogs.

The tenant submitted that the landlord called animal control about the tenant's dogs when the German Shepherd bit her yard man and her; however, the animal control officer said after her investigation that the German Shepherd was not aggressive, only territorial. The tenant was not issued a citation.

Landlord's rebuttal-

The landlord denied that the tenant inquired about dogs when looking for a home to rent.

The landlord said that she did not know the dogs were inside the house, and said that "dogs are not allowed in the house". She said dogs in the house are a "no go".

Analysis

Where a Notice to End Tenancy is disputed, the landlord had the burden to prove that the tenancy should end for the reasons indicated on the Notice, which in this case, is that the tenant breached a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.

Residential Tenancy Branch Policy Guideline 8 states that a material term is a term that is of such importance that the most trivial breach of the term gives the other party the right to end the tenancy and does not become material due to its inclusion in the written tenancy agreement. The landlord, in this case, bears the burden of proof.

In this case, the term relied upon by the landlord to argue that the tenant breached a material term concerned paragraph 3, which she asserted restricted the tenant from having his dogs, as she did not give written permission.

I find in this case, the landlord submitted insufficient evidence to support that the clause restricting pets was a material term.

When considering the evidence, I turn to paragraph 15 of the written tenancy agreement, which states that upon execution of the "Lease", or written tenancy

agreement, the tenant will pay the landlord a pet deposit of \$1,075.00, which is the same amount of the security deposit and the maximum allowed by the Act for a pet damage deposit. I find this clause contradicts the landlord's own statement that there was no agreement with the tenant that he could have dogs on the property. Rather, I find this clause supports that the landlord allowed in writing the tenant to have pets.

Additionally, when the landlord stated in the hearing that dogs were not allowed in the house, I further find this confirms that the landlord knew and accepted that the tenant had his dogs at the rental unit.

Due to the above, I find the landlord failed to demonstrate that when the tenancy agreement was being negotiated, the tenant understood that this term was material or that he could not have his pets at the rental unit.

Due to the above, I find that the landlord did not prove that the term in question was a material term or that the tenant violated the term.

As a result, I find the landlord's One Month Notice to End Tenancy for Cause, incorrectly date July 20, 2019, for an effective move out date of July 20, 2019, is not valid and not supported by the evidence, and therefore has no force and effect.

I order that the Notice be cancelled, with the effect that the tenancy will continue until ended in accordance with the Act.

Landlord's application-

As I have cancelled the Notice, I dismiss the landlord's application seeking an order of possession of the rental unit based upon that Notice. I likewise dismiss her request to recover the filing fee for her application.

Tenant's application-

I grant the portion of the tenant's application seeking cancellation of the Notice.

As the tenant was successful with his application, I award him recovery of his filing fee of \$100.00 paid for this application. The tenant is directed to deduct \$100.00 from his next, or a future month's rent payment, in satisfaction of his monetary award, informing the landlord when he is making this deduction.

Conclusion

The landlord's application is dismissed, without leave to reapply.

The tenant's application seeking cancellation of the Notice is granted as I have cancelled the Notice and granted him recovery of her filing fee, pursuant to section 72 of the Act.

The portion of the tenant's and the landlord's applications not dealing specifically with their request to cancel or enforce the Notice is 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: August 16, 2019

Residential Tenancy Branch