Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC FFT

Introduction

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

- cancellation of the landlords' One Month Notice to End Tenancy for Cause (One Month Notice) pursuant to section 47 of the *Act*; and
- the recovery of the filing fee for this application from the landlords pursuant to section 72 of the *Act*.

Both parties attended the hearing and were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

As both parties were present, service of documents was confirmed. The landlord confirmed receipt of the tenant's notice of dispute resolution proceeding package and the tenant's digital evidence. The tenant confirmed receipt of the landlord's documentary and digital evidence. Based on the undisputed testimonies of the parties, I find that both parties were served in accordance with sections 88 and 89 of the *Act*.

Preliminary Issue - Procedural Matters

Section 55 of the *Act* requires that when a tenant submits an Application for Dispute Resolution seeking to cancel a notice to end tenancy issued by a landlord I must consider if the landlord is entitled to an order of possession if the tenant's Application is dismissed and the landlord has issued a notice to end tenancy that is compliant with the *Act*.

Further to this, the standard of proof in a dispute resolution hearing is on a balance of probabilities. Usually the onus to prove the case is on the person making the claim. However, in situations such as in the current matter, where a tenant has applied to cancel a landlord's Notice to End Tenancy, the onus to prove the reasons for ending the tenancy transfers to the landlord as they issued the Notice and are seeking to end the tenancy.

Issue(s) to be Decided

Should the landlord's One Month Notice to End Tenancy for Cause be cancelled? If not, is the landlord entitled to an Order of Possession on the basis of the One Month Notice?

Is the tenant entitled to recover the cost of the filing fee from the landlord?

Background and Evidence

While I have turned my mind to all the documentary evidence and the testimony presented, not all details of the submissions and arguments are reproduced here. Only the aspects of this matter relevant to my findings and the decision are set out below.

The parties agreed on the following facts. This tenancy began as a fixed-term tenancy on February 1, 2011, with a scheduled end date of January 31, 2012, at which point the tenancy continued on a month-to-month basis. Neither party could recall the exact amount of current monthly rent but estimated it to be approximately $989.00 payable on the first day of each month. The tenant paid a security deposit of $435.00 at the commencement of the tenancy.

The landlord served the tenant with a One Month Notice dated May 27, 2019 by posting it on the rental unit door.

A copy of the One Month Notice, submitted into evidence, stated an effective move-out date of June 30, 2019, with the following box checked off as the reason for seeking an end to this tenancy:

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

The "Details of Cause" section of the notice stated the following:

Multiple building tenants have witnessed the Tenant, [Rental Unit #], *bring in multiple dogs into the building which is against her signed tenancy agreement. See attached for more details.*

The landlord provided additional details of cause in an attached sheet.

The tenant confirmed receipt of the One Month Notice on May 28, 2019. On May 30, 2019, the tenant filed an Application for Dispute Resolution to cancel the notice.

The landlord claimed that the tenant's signed written tenancy agreement stipulates a "No pet policy" and a clause #18 requiring that a tenant obtain prior written permission from the landlord to keep a pet. Therefore, the landlord claimed that the tenant breached a material term of the tenancy agreement by having three dogs living in the rental unit.

The tenant testified that the tenant did not specifically initial the box on the tenancy agreement to the "No pet policy" stipulation on the written tenancy agreement. Further, the tenant asserted that there are other tenants with dogs in the rental building.

The tenant testified that previously there was another tenant who had a poodle mix dog residing in a rental unit on her floor. The tenant testified that the tenant dog sat for the dog on occasion. The landlord testified that there was a prior tenant with a poodle mix dog who asked permission from the landlord to allow the dog to reside in the rental unit while the dog's owner was away. The landlord estimated that the dog lived in the rental unit for approximately three years.

The landlord testified that there are no other dog "owners" in the building, but acknowledged that there are tenants who have dogs that visit in the rental units. The landlord called as a witness another tenant in the building who lives on the same floor as the tenant. The landlord's witness confirmed that a black shepherd that visits the witness, however, the witness disputed the tenant's claim that the dog lives with in the witness's rental unit. The landlord's witness stated that the dog does not stay overnight but only visits for a few hours a week.

The tenant called on witness #1 who confirmed attending at the tenant's rental unit two times a week over the past two to three months, and that during these visits has seen

two other dogs coming or going from two other rental units on the tenant's floor on three or four occasions.

The tenant called on witness #2 who lives in the rental building next to the tenant's building, and stated seeing dogs coming and going from in and out of the building over the past ten years.

The tenant confirmed that in mid-April 2019, the tenant brought in two more dogs to the rental unit, in addition to the existing dog. The tenant testified that the existing dog has been living in the rental unit since 2014. However, the landlord testified that the landlord did not become aware of the tenant's first dog until approximately May 2015, and became aware of the additional two dogs in mid-April 2019.

The landlord issued a prior One Month Notice to the tenant in May 2016 on the grounds that the tenant had significantly interfered with or unreasonably disturbed another occupant or the landlord, and seriously jeopardized the health or safety or lawful right of another occupant or the landlord as a result of the tenant's dog. The One Month Notice was disputed by the tenant resulting in an arbitration decision dated June 9, 2016 (file number noted on cover sheet of this Decision) cancelling the landlord's notice.

The landlord stated that the building owners sought clarification of the June 9, 2016 decision. The Residential Tenancy Branch rendered a clarification of the decision to the landlord on June 23, 2016.

Analysis

Section 47 of the *Act* provides that upon receipt of a Notice to End Tenancy for Cause the tenant may, within ten days, dispute the notice by filing an Application for Dispute Resolution with the Residential Tenancy Branch.

The tenant confirmed that receipt of the One Month Notice posted on the rental unit door on May 28, 2019 and submitted an application to dispute the notice on May 30, 2019. I find that the tenant has applied to dispute the notice within the time limits provided by section 47 of the *Act*.

As set out in the Residential Tenancy Branch Rules of Procedure 6.6 and as I explained to the parties in the hearing, if the tenant files an application to dispute a notice to end tenancy, the landlord bears the burden to prove the grounds for the One Month Notice.

The only recognized cause for ending a tenancy with a one month notice for breach of a term of the tenancy is if the breached term is a “material” term of the tenancy agreement.

A material term is defined in the Residential Tenancy Policy Guideline #8 Unconscionable and Material Terms as a term that is so important that the most trivial breach of that term gives the other party the right to end the agreement.

In this matter, I find that the landlord claimed to have become aware of the tenant’s first dog in May 2015, yet the landlord did not serve the tenant with a One Month Notice for breach of a material term. A year later, the landlord served the tenant with a One Month Notice on other grounds, but not for breach of a material term.

The landlord testified that they received clarification on the June 9, 2016 arbitrated decision by the end of June 2016, yet the landlord did not serve the tenant with a One Month Notice for breach of a material term until May 2019, approximately three years later.

Further, I find that the landlord is aware of other dogs that visit other rental units in the building and although the landlord seems to make a distinction between dogs owned by tenants and dogs that visit tenants in the rental units, the landlord did not clarify how that is addressed in terms of the “no pet policy” or clause 18 of the tenancy agreement.

Therefore, I do not find that the “no pet policy” or clause #18 of the tenancy agreement constituted a material term of the tenancy agreement as the landlord failed to address the tenant’s breach of the term with any immediacy. It would be reasonable to expect that a term of the tenancy, if considerable material to both parties, would have been pursued by the landlord with a One Month Notice as soon after the tenant had been provided a reasonable opportunity to address the breach. Given the landlord waited almost three years after obtaining clarification on the June 2016 arbitration decision to issue a One Month Notice for breach of material term, does not support a finding that the “no pet policy” or clause #18 were considered material terms by the landlord. As well, the policy and clause has not been clarified to distinguish between pet ownership or pet visitation, and therefore appears to be applied differently across tenancies.

In summary, based on the testimony and evidence presented, on a balance of probabilities, I do not find that the tenant has breached a “material term” of the tenancy

agreement, and as such the landlord has not proven the grounds on the One Month Notice for ending this tenancy. The tenant's application is successful and the landlord's One Month Notice is cancelled and of no force or effect.

Therefore, the tenancy will continue until ended in accordance with the *Act*.

As the tenant was successful in this application, the tenant may, pursuant to section 72 of the *Act*, recover the $100.00 filing fee from the landlord. In place of a monetary award, I order that the tenant withhold $100.00 from a future rent payment on one occasion.

Conclusion

The tenant was successful in this application to dispute the landlord's One Month Notice. I order that the One Month Notice to End Tenancy for Cause dated May 27, 2019 is cancelled and of no force or effect, and this tenancy shall continue until it is ended in accordance with the *Act*.

The tenant may deduct $100.00 on one occasion from monthly rent in satisfaction of the recovery of 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: August 26, 2019

Residential Tenancy Branch