



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding TRANSPACIFIC REALTY ADVISORS
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC, OLC, FFT

Introduction

On July 12, 2019 the Tenant submitted an Application for Dispute Resolution under the *Residential Tenancy Act* ("the Act") seeking to cancel a One Month Notice to End Tenancy for Cause dated July 9, 2019, ("the One Month Notice"). The Tenant also applied for an order for the Landlord to comply with the Act, and to recover the filing fee for the Application.

The Landlord and Tenant appeared at the hearing. The hearing process was explained, and the participants were asked if they had any questions. Both parties provided affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form and make submissions to me.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue to be Decided

- Does the Landlord have sufficient cause to end the tenancy?
- Is the Tenant entitled to an order for the Landlord to comply with the Act, Regulation, or tenancy agreement?

Background and Evidence

Both parties testified that the tenancy began on May 1, 2008, and is on a month to month basis. Rent in the amount of \$1,305.00 is due to be paid to the Landlord each month. The Tenant paid the Landlord a security deposit of \$525.00.

The tenancy agreement contains a term regarding pets. The term provides that unless specifically permitted in writing in advance by the Landlord, a tenant must not keep or allow on the residential property any animal, including a dog, cat, reptile, or exotic animal domestic or wild. The tenancy agreement provides that if the Landlord gives notice to the Tenant to correct any breach and the Tenant fails to comply within a reasonable time, the Landlord has the right to end the tenancy.

The Landlord served the One Month Notice to the Tenant by posting it to the door on July 9, 2019. The Notice has an effective date (the date the Tenant must move out) of August 31, 2019.

The Landlord selected the following reasons for ending the tenancy within the One Month Notice:

Tenant or a person permitted on the property by the Tenant has:

- *Put the Landlord's property at significant risk*

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

In the One Month Notice, the Landlord provided the details of cause as follows:

We have issued two breach letters to Tenant. As per clause 18 of her tenancy agreement Tenant is not permitted to have pets but she has multiple birds in her suite. She lets the birds fly around freely in the suite whereby attracting mice/pests due to the bird seeds and waste falling on the floor. Tenant has been asked to remove the birds by June 30th, 2019 but has not complied.

The One Month Notice provides information for Tenants who receive the Notice. The Notice states that a Tenant has the right to dispute the Notice within 10 days after receiving it by filing an Application for Dispute Resolution at the Residential Tenancy Branch.

The Tenant disputed the One Month Notice on July 12, 2019, within the required time period.

At the start of the hearing the Landlord testified that they have rescinded the One Month Notice. The Landlord testified that the Tenant has removed the birds from the rental unit.

The Tenant testified that she removed the birds from the rental unit because she was scared of being evicted. The Tenant has removed the birds until this matter could be resolved at the hearing. If successful, the Tenant plans to return the birds to the unit.

The hearing proceeded to determine whether or not the Landlord has the right to order the removal of the birds from the rental unit and issue a notice to end tenancy if the Tenant does not comply.

The Tenant testified that prior to being accepted as a Tenant in 2008 she met with the Landlord, Ms. L and informed her that she has two birds. The Tenant testified that Ms. L accepted her as a Tenant and did not require her to pay a pet deposit. The Tenant testified that the Landlord wrote "no dogs allowed" on the tenancy agreement.

The Tenant testified over a period of 10 years the Landlord was aware that she had birds in her unit and took no action against her. The Tenant testified that the Landlord never made a complaint to her about the birds. She testified that the Landlord asked her to ensure the birds were caged when the Landlord was in the rental unit. The Tenant testified that the Landlord observed the birds on many occasions when the Landlord was in the rental unit for maintenance, inspections, or repairs. The Tenant testified that the Landlord, Ms. L left the rental property in 2018.

The Tenant testified that in the fall of 2018, the new Landlord was dealing with reports of mice. The Tenant observed mice in her unit and contacted the new Landlord who observed that the Tenant had pet birds in the unit. The Landlord informed the Tenant that she did not have written permission to have pet birds and asked her to remove them.

The Landlord testified that the Tenant had birds flying freely in the unit when the Landlord entered the unit.

The Landlord testified that Ms. L did not give permission for the Tenant to have pet birds. The Landlord provided a letter from Ms. L.

The Landlord testified that there were issues with mice on the rental property and the birds may be spreading seeds in the rental unit when they fly.

The Landlord testified that no other occupants on the property have pet birds. The Landlord testified that there are no dogs living on the rental property; however, some occupants have cats.

The Landlord testified that they provided the Tenant with two breach letters regarding the unauthorized birds. The Landlord provided a copy of the breach letters.

Analysis

Estoppel is a legal principle which bars a person from asserting a legal right due to that person's actions, conduct, statements, admissions, or failure to act, especially when the earlier representation has been relied upon by others.

Based on the evidence and testimony before me, I make the following findings:

I find that the tenancy agreement contains a term regarding pets, requiring a Tenant to receive written permission prior to getting a pet. I find that the tenancy agreement and the Act permits the Landlord to end a tenancy if the Landlord gives notice to the Tenant to correct a breach and the Tenant fails to comply within a reasonable time.

I have considered that the Tenant has lived in the rental unit with her birds for 11 years. While I accept that the tenancy agreement permits the Landlord to end a tenancy for a breach of a material term regarding pets, I find that it is more likely than not that the previous Landlord was aware that the Tenant had birds in the rental unit and did not take any steps to enforce the term in the tenancy agreement regarding written permission. While the previous Landlord may not have provided written consent, there is insufficient evidence from the Landlord that the previous Landlord told the Tenant to remove the birds.

I find that the Landlord failed to enforce the term in the tenancy agreement regarding pets from May 2008 until the fall of 2018, and therefore, the Landlord is estopped from enforcing the term.

I find that the Tenant is permitted to keep her pet birds in the rental unit. However, the Tenant is not permitted to introduce any new birds, or other pets, into the tenancy without the written permission of the Landlord.

Section 72 of the *Act* gives me authority to order the repayment of a fee for an application for dispute resolution. As the Tenant was successful with her application, I order the Landlord to repay the \$100.00 fee that the Tenant paid to make application for dispute resolution. I authorize the Tenant to withhold \$100.00 from one future rent payment.

Conclusion

I find that the Landlord failed to enforce the term in the tenancy agreement regarding pets from May 2008 until the fall of 2018, and therefore, the Landlord is estopped from enforcing the term.

I find that the Tenant is permitted to keep her pet birds in the rental unit. However, the Tenant is not permitted to introduce new birds, or other pets, into the tenancy without the written permission of the Landlord.

I authorize the Tenant to withhold \$100.00 from one (1) future rent payment.

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: September 17, 2019

Residential Tenancy Branch