



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding 9240CORBOULD INC
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPC, CNC, FF

Introduction

This was a cross-application hearing for Dispute Resolution under the *Residential Tenancy Act* (“the Act”).

On August 6, 2019, the Tenant applied to cancel a One Month Notice to End Tenancy for Cause.

On August 11, 2019, the Landlord applied for an order of possession for the rental unit based on the issuance of a One Month Notice to End Tenancy for Cause.

The matter was set for a conference call hearing. Both parties were present at the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained. The parties were provided with an opportunity to ask questions about the hearing process. They were provided with the opportunity to present affirmed oral testimony and to make submissions during the hearing. The parties confirmed that they exchanged the documentary evidence before 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.

Issues to be Decided

- Does the Landlord have sufficient cause to end the tenancy?

Background and Evidence

The Tenant moved onto the rental property in August 2012. The Landlord purchased the rental property in early 2018 and approached the existing Tenants of the property to have them sign new tenancy agreements. The parties testified that a new tenancy agreement was signed on May 1, 2019, for the tenancy to continue on a month to month basis. Rent in the amount of \$855.00 is due to be paid to the Landlord by the first day of each month.

The Tenant testified that the new Landlord approached him and asked him to sign the new tenancy agreement. He testified that the new tenancy agreement contains the same terms and conditions of his previous tenancy agreement.

The Landlord provided testimony confirming that they approached occupants of the property and asked them to sign new tenancy agreements with the same terms and conditions. The Landlord provided a copy of the tenancy agreement and addendum signed and dated May 1, 2019.

The Landlord testified that the Tenant has breached material terms of the tenancy agreement by having an unauthorized pet and by failing to obtain and maintain insurance coverage for liability and contents.

The Landlord testified that the tenancy agreement does not permit the Tenant to have a pet. The Landlord testified that the Tenant has a cat. The Landlord issued a breach letter to the Tenant on January 6, 2019, and July 6, 2019, asking the Tenant to correct the violation. The Landlord provided a copy of the breach letters.

The Landlord testified that the Tenant also failed to obtain insurance coverage. The Landlord provided a copy of a breach letter dated January 5, 2019 where the Landlord explains that the Tenant is required to obtain insurance and provide the Landlord with a copy within 20 days. The Landlord submitted that the new tenancy agreement addendum contains a new term requiring the Tenant to have insurance. The Landlord testified that the Tenant did not provide proof of insurance.

The Landlord testified that the Tenant was served with a One Month Notice to End Tenancy for Cause dated July 27, 2019. The reason for ending the tenancy within the One Month Notice is:

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

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 within the required timeframe.

In reply, the Tenant testified that his original tenancy agreement contained a term regarding pets. Pets were not allowed without permission from the Landlord. The Tenant testified that he sought and received permission to have a cat from the previous resident manager of the rental property since March 2014.

The Tenant testified that he informed the new owner of the rental property that he has a cat. He testified that the Landlord Mr. B.M. was aware that he had a cat. The Tenant testified that when Mr. B.M entered the Tenant's rental unit to sign the new tenancy agreement the Landlord saw the cat.

With respect to the term and condition regarding insurance, the Tenant testified that his original tenancy agreement did not contain a term requiring him to have Tenant insurance. The Tenant testified that he did not notice the term when he signed the agreement and the Landlord did not make him aware of the new term. The Tenant testified that he is retired and is working 50 hours each month and cannot afford Tenant insurance.

In reply, the Landlord testified that noticed that the Tenant had a cat when he was in the rental unit. He testified that there was no evidence from the previous Landlord that the Tenant could have a cat. The Landlord testified that after he saw the cat in the rental unit, he did not try to contact the previous Landlord to determine whether the Tenant was permitted to have a cat.

The Landlord testified that the Tenant signed the tenancy agreement addendum and initialed each page of the agreement.

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.

Residential Tenancy Branch Policy Guideline # 28 Pet Clauses provides the following information:

In some cases a landlord may know of a pet being kept by a tenant in contravention of a pets clause and do nothing about it for a period of time. The landlord's mere failure to act is not enough to preclude him or her from later insisting on compliance with the pets clause. However, a delay may indicate that the pets clause is not considered by the landlord to be a material term of the tenancy agreement. As well, if a landlord is aware of the breach of a pets clause and does not insist on compliance and does something which clearly indicates that the pet is acceptable, the landlord may be prohibited from ending the tenancy for that breach. This is called "waiver". It is important to note that it is not a waiver of the pets clause itself, but only a waiver of the landlord's right to terminate the lease for that particular breach.

Where a landlord makes a clear representation to the tenant that the pet is acceptable, the landlord may later be prevented from claiming the pets clause has been breached.

Section 14 of the Act provides that a tenancy agreement may be amended to add, remove or change a term, other than a standard term, only if both the landlord and tenant agree to the amendment.

Based on the evidence and testimony of the parties before me, and on a balance of probabilities, I make the following findings:

When the new Landlord purchased the rental property, he inherited the Tenants and was obligated to accept the existing terms and conditions of their tenancy agreements. The Tenant was not required to sign a new tenancy agreement with the new Landlord.

I accept the testimony from the Landlord and Tenant that the original tenancy agreement contained a term regarding pets. I find that the new tenancy agreement provides that the Tenant shall not keep or allow to be kept any pets and that the pet policy is a material term of the agreement.

I accept the Tenant's testimony that on March 21, 2014 he received verbal permission from the previous resident manager to get a cat. I also find that the new Landlord was aware that the Tenant had a cat when the Landlord asked the Tenant to sign the new tenancy agreement which prohibits pets.

I have considered that the Tenant has lived in the rental unit with the cat for 5 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 permitted the Tenant to have the cat; or was aware that the Tenant had the cat and did not take any steps to enforce the term in the tenancy agreement regarding pets. There is no evidence before me that the previous Landlord told the Tenant to remove the cat.

I find that the previous Landlord permitted the Tenant to have a cat or failed to enforce the term in the tenancy agreement regarding pets, and therefore, the new Landlord is estopped from enforcing the term.

I find that the Tenant is permitted to keep the cat in the rental unit. However, the Tenant is not permitted to introduce any new pets into the rental unit or property.

With respect to the term requiring Tenant insurance, I find that this term was not on the original tenancy agreement. I find that the Tenant signed the new tenancy agreement and initialed each page of the addendum. I find that the term requiring insurance is an enforceable and material term of the new tenancy agreement.

I have considered the Tenant's testimony that he believed he was signing a tenancy agreement with the same terms as the original agreement. I accept that he did not notice the new term and that the Landlord did not make him aware of the new term.

Section 62 (3) of the Act authorizes me to make any order necessary to give effect to the rights, obligations and prohibitions under this Act, including an order that a landlord or tenant comply with this Act, the regulations or a tenancy agreement and an order that this Act applies.

I order the Tenant to comply with the term of the tenancy agreement that requires him to obtain insurance and provide the Landlord with proof of the insurance. The Tenant must comply with my order within 30 days of receiving my decision.

If the Tenant fails to provide the Landlord with proof of the insurance, the Landlord may issue a notice to end tenancy for breach of a material term of the tenancy agreement.

Conclusion

I find that the previous Landlord permitted the Tenant to have a cat or failed to enforce the term in the tenancy agreement regarding pets, and therefore, the new Landlord is estopped from enforcing this term.

The Tenant is permitted to keep the cat in the rental unit. However, the Tenant is not permitted to introduce any new pets into the rental unit or property.

The Tenant must comply with the Tenancy Agreement term that requires him to obtain insurance and provide the Landlord with proof of the insurance.

If the Tenant fails to provide the Landlord with proof of the insurance, the Landlord may issue a notice to end tenancy for breach of a material term of the tenancy agreement.

The One Month Notice to End Tenancy for Cause, dated July 27, 2019 is cancelled.

The tenancy will continue until ended in accordance with the Act.

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: October 16, 2019

Residential Tenancy Branch