



Dispute Resolution Services

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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 landlord's One Month Notice to End Tenancy for Cause (the "**Notice**") pursuant to section 47; and
- authorization to recover the filing fee for this application from the landlord pursuant to section 72.

Both parties attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses. The landlord's husband attended the hearing to give testimony.

The tenant testified, and the landlord confirmed, that the tenant served the landlord with the notice of dispute resolution form and supporting evidence package. The landlord testified, and the tenant confirmed, that the landlord served the tenant with her evidence package. I find that all parties have been served with the required documents in accordance with the Act.

Issue(s) to be Decided

Is the tenant entitled to:

- 1) the cancellation of the Notice; and
- 2) recover her filing fee.

Background and Evidence

While I have considered the documentary evidence and the testimony of the parties, not all details of their submissions and arguments are reproduced here. The relevant and important aspects of the parties' claims and my findings are set out below.

The parties entered into a written, fixed term tenancy agreement starting June 1, 2019 and ending August 31, 2019. The tenancy has since converted to a month to month tenancy. Monthly rent is \$900 and is payable on the first of each month. The tenant paid the landlord a security deposit of \$450 and a pet damage deposit of \$450. The landlord still retains these deposits. The tenant continues to reside in the rental unit.

The tenancy agreement included an addendum which included the following terms:

- 1) no smoking on premises, including marijuana or other drugs, vaping, and e-cigarettes.
- 2) Keep grass around house trimmed (fire hazard). Mower not provided. There is a grass whip.
- 3) No indoor pets are preferred. Tenant may negotiate other terms with landlord in certain circumstances.

The landlord argues that the tenant has breached each of these terms.

The landlord testified that, at the start of the tenancy, the tenant advised her that she had two dogs. The tenant denied this. She testified that she told the landlord she had two dogs and three cats before she entered into the tenancy agreement.

The landlord argued that the tenant breached the tenancy agreement by keeping three cats on the rental property.

The landlord testified that tenant breached the tenancy agreement by smoking on the rental property. She testified that an agent of her found cigarette butts in a flower pot on the rental property, and that on one occasion she visited the rental property she smelled cigarette smoke on the tenant.

The tenant denied that she smokes, or that there were cigarette butts in a flower pot on the property. The tenant testified that she has quit smoking, and sometimes uses Nicorette patches to aid in her cessation.

The landlord testified that the tenant breached the tenancy agreement by failing to property mow the lawn on the property. The tenant did not deny this, rather she testified

that due to excessive rain, she was unable to mow the lawn. She testified that the lawn is now currently mowed.

The landlord served the Notice on the tenant personally on July 25, 2019. The Notice specified the basis for ending the tenancy as:

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

The landlord testified that she did not send any written notice to the tenant regarding correcting the alleged breaches before she issued the Notice. She testified that she provided a letter to the tenant which accompanied the Notice that reiterated the the alleged breaches, and which concluded:

“Since we only had a fixed lease agreement to August 31, 2019, and our primary objective was to sell our property, we would prefer an amicable parting.”

This letter contained no request that the tenant correct the alleged breaches.

The tenant denied that she breached any of the terms of the tenancy agreement.

Analysis

A landlord may end a tenancy if a tenant breaches a material term of the tenancy agreement. Section 47(1)(h) of the Act states:

47(1)A landlord may end a tenancy by giving notice to end the tenancy if one or more of the following applies:

[...]

(h)the tenant

(i)has failed to comply with a material term, and

(ii)has not corrected the situation within a reasonable time after the landlord gives written notice to do so;

Residential Tenancy Branch Policy Guideline 8 expands on this section:

To end a tenancy agreement for breach of a material term the party alleging a breach – whether landlord or tenant – must inform the other party in writing:

- that there is a problem;
- that they believe the problem is a breach of a material term of the tenancy agreement;
- that the problem must be fixed by a deadline included in the letter, and that the deadline be reasonable; and
- that if the problem is not fixed by the deadline, the party will end the tenancy.

Where a party gives written notice ending a tenancy agreement on the basis that the other has breached a material term of the tenancy agreement, and a dispute arises as a result of this action, the party alleging the breach bears the burden of proof. A party might not be found in breach of a material term if unaware of the problem.

Based on the evidence before me, I find that the landlord failed to inform the tenant in writing of the alleged breaches before issuing the Notice and failed to provide her with a reasonable (or any) amount of time to correct the alleged breaches. This is required before issuing a notice to end tenancy for a breach of a material term of a tenancy agreement.

As such, I find that the Notice does not meet with the requirements set out in the Act.

Accordingly, I order that the Notice is cancelled and of no force or effect. The tenancy will continue.

I make no findings as to whether the tenant breached the terms of the tenancy agreement as alleged by the landlord, or, if she did, whether those terms were material terms of the tenancy agreement.

As the tenant has been successful in her application, I order that the landlord reimburse her the filing fee (\$100). The tenant may withhold this amount from her next month's rent in full satisfaction of this amount.

Conclusion

I grant the tenant's application and cancel the Notice.

Pursuant to section 72(2), I order that the tenant may withhold \$100 from her next month's rent.

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 03, 2019

Residential Tenancy Branch