



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding PACE REALTY CORPORATION and
[tenant name suppressed to protect privacy]

DECISION

Dispute Codes **CNC FFT**

Introduction

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

- An order to cancel a One Month Notice to End Tenancy for Cause ("Notice") pursuant to section 47 and
- Authorization to recover the filing fees from the landlord pursuant to section 72.

Both of the tenants attended the hearing and were represented by an advocate, MM ("tenant"). The landlord attended the hearing and was represented by property manager, DL ("landlord"). As both parties were in attendance, service of documents was confirmed. The landlord confirmed receipt of the tenant's application for dispute resolution and the parties acknowledged the exchange of evidence and stated there were no concerns with timely service of documents. Both parties were prepared to deal with the matters of the application.

Issue(s) to be Decided

Should the Notice be upheld or cancelled?

Should the filing fee be recovered from the landlord?

Background and Evidence

The tenant provided the following testimony. She moved into the rental unit on December 1, 2016 and a tenancy agreement was signed with a different landlord at the time. A copy of the tenancy agreement with the previous landlord was provided as evidence. Part 4B of this tenancy agreement indicates a pet damage deposit is not applicable. At commencement, the previous landlord took a \$350.00 security deposit but no pet damage deposit in accordance with the tenancy agreement.

The building was purchased by a new landlord and new tenancy agreements were signed with the tenants of the building on January 18, 2018. The new tenancy agreement indicates in section 4B that a pet damage deposit is not applicable. The schedule "A" addendum to the tenancy agreement reads,

The tenant agrees to disclose keeping any kind of pet during the duration of this agreement.

A copy of this tenancy agreement was provided in evidence by both the tenant and the landlord. The tenant testified that on January 12, 2018, she called a representative of the new landlord to advise them of her pets and a notation was made on the addendum which reads:

***** please see account notes as per [name withheld for privacy] *****

The tenant testified that this reference to account notes refers to the phone call she made to disclose the pets in her unit at the time the addendum was signed.

The tenant testified that back in December 2016 when she first moved in, the previous owner of the building was aware of her pets and allowed them because the rental market was not as tight as it is today. In evidence, the tenant has provided a letter from the previous building manager, however the tenant did not call that person as a witness to testify.

The landlord provided the following testimony. On August 6, 2019, when her company took over management of the building, they performed condition inspections of all of the rental units. In the tenant's rental unit, the property manager noted 3 dogs, 3 cats and snakes. The landlord testified that the presence of the animals was not disclosed to her by the previous property management company or owner. She was not in possession of any 'account notes'. No written disclosure of pets was provided from the tenant in her file.

On August 22nd, the landlord gave the tenant written notification to remove all her pets within 7 days. The letter indicates the tenant is in a material breach of the tenancy agreement; she does not have permission to have pets in the rental unit and that the tenant had 7 days to comply. The tenant did not remove the pets and the landlord served her with a One Month Notice To End Tenancy for Cause on August 29, 2019.

The tenant acknowledges receiving it on that date. The effective date on the Notice is September 30th, and the reasons for ending the tenancy are as follows:

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

Under details of cause, the landlord wrote:

Pets not allowed per tenancy agreement. Did not remove the pet after reasonable written request to do so.

The tenant filed an Application for Dispute Resolution to dispute the Notice on September 4, 2019.

The parties agree that since being served with the Notice, the tenant has continued to occupy the rental unit and has paid rent up until the end of November 2019.

Analysis

I find the tenant was served with the Notice on August 29, 2019 in accordance with section 88 and 90 of the *Act* and filed an application to dispute it within 10 days as required by section 47.

If the tenant files the application, the landlord bears the burden to prove on a balance of probabilities, the grounds for the 1 Month Notice. The landlord must show it is more likely than not that the tenancy should be ended for the reasons identified in the 1 Month Notice. In the matter at hand the landlord must demonstrate that the tenant breached a material term of the tenancy agreement by keeping undisclosed pets.

Pet Clauses are examined extensively in Residential Tenancy Policy Guideline PG-28.

The question of whether or not a pets clause is a material term of the tenancy agreement will depend upon what the parties intended to be the consequence of a breach of the clause. The tenancy agreement itself may designate the pets clause to be a "material term". While that is an important indication, it is not always conclusive.

...

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.

...

It is always acceptable and advisable for the parties to write down and sign an agreement that pets or a certain pet is acceptable despite a pets clause in the tenancy agreement.

In this case, the tenant argues that because the original owner of the property allowed pets back in 2016, the permission to have pets should continue with this landlord going forward. The tenant did not indicate what pet she had in 2016, whether it was one dog, one cat or several. It may have been altogether fine with the original owner to have a single pet with the owner's permission but the tenant has not provided any evidence to satisfy me of that. The previous property manager was not called as a witness and was not able provide any testimony regarding the letter she provided.

The tenancy agreement signed in 2016 doesn't indicate specific permission to have pets; it only states that a pet damage deposit was not required. I cannot rely on this document to persuade me that the tenant made the previous property owner aware of her several pets or that the previous property owner permitted it.

The tenant points to the notation made on the addendum to the tenancy agreement signed with the new owner. While the tenant puts weight on this notation as indication of a phone call she made with a previous property manager, I find it to be vague and inconclusive. The addendum specifically requires that the tenant is to **disclose the keeping of any pet during the tenancy**. I cannot rely on the tenant's testimony that someone else's notes made pursuant to a phone call on January 12th is proof of the disclosure required by the term of the tenancy agreement addendum.

The landlord provided compelling evidence that she and the property management company were unaware of the tenant's pets until they performed the inspection on August 6th and they advised the tenant that she was in a material breach of the term of the tenancy agreement on August 22nd. I am satisfied there was no prior knowledge of the tenant keeping pets before August 6th. As such, I do not find there was any delay in notifying the tenant of the breach to the terms of the tenancy agreement. As stated in the PG-28, a delay may indicate that the pets clause is not considered by the landlord to be a material term of the tenancy agreement.

PG-8 provides guidance related to Unconscionable and Material Terms.

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.

The landlord gave the tenant 7 days to rectify the breach as alleged in the written notice. The tenant says that 7 days is adequate time to do so. While the parties may disagree on what is considered reasonable, I am satisfied that it is enough time to find alternate care for the pets or be served with a One Month Notice To End Tenancy for Cause in the alternative.

A material term is a term that the parties both agree is so important that the most trivial breach of that term gives the other party the right to end the agreement.

I find that inclusion of a specific term in the tenancy agreement that the tenant disclose the keeping of a pet during the tenancy is a material term of the tenancy. I make this finding for the following reasons. First, there is no pet damage deposit on the tenancy agreement. If the landlord were aware that the tenant had 3 dogs, 3 cats and a snake, a reasonable person would conclude that a landlord would require a pet damage deposit. It would be irrational to allow a tenant to have these many pets and not seek a pet damage deposit when *Act* clearly allows them to demand one. Second, when the original tenancy agreement in 2016 was signed and vacancy rates were lower it is possible that the previous owner allowed pets. However, when the tenant signed a new tenancy agreement, she initialled the spot indicating she would disclose the keeping of the pets. She had the opportunity to disclose it upon signing but made the decision not to do so. I find that by not providing the disclosure, the tenant recognized that it was important to the landlord. Third, the tenant testified she would find it difficult to find another place to rent with this many pets. Given that knowledge, it would be reasonable to assume she understood this landlord would have the same hesitancy to allow her to keep all of them and retain her as a tenant.

I find the landlord has proven, on a balance of probabilities that the tenancy should end for the reasons provided on the One Month Notice To End Tenancy for Cause: breach of a material term of the tenancy. The tenant failed to remove the pet(s) within a reasonable time after a written request to do so.

I uphold the landlord's Notice.

Section 55 of the *Act* states:

If a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, the director must grant to the landlord an order of possession of the rental unit if

(a) the landlord's notice to end tenancy complies with section 52 [*form and content of notice to end tenancy*], and

(b) the director, during the dispute resolution proceeding, dismisses the tenant's application or upholds the landlord's notice.

I find the landlord's Notice complies with the form and content requirements of section 52 as it is signed and dated by the landlord, provides the address of the rental unit, the effective date of the notice, and the grounds for the tenancy to end; therefore, I find the landlord is entitled to an Order of Possession pursuant to section 55. Despite the effective date of the Notice having passed, the landlord has accepted rent for the month of November. I grant the landlord an Order of Possession effective November 30, 2019 at 1:00 p.m.

As the tenant was not successful, the tenant will not recover the filing fee.

Conclusion

I grant an Order of Possession to the landlord effective **November 30, 2019 at 1:30 p.m.** Should the tenants or anyone on the premises fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

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: November 06, 2019

Residential Tenancy Branch