



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding 220 DEWDNEY INVESTMENT
INC. and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OLC, FFT

Introduction

This hearing was convened as the result of the tenant's application for dispute resolution under the Residential Tenancy Act ("Act"). The tenant applied for an order requiring the landlord to comply with the Act, the Regulations, or the tenancy agreement and for recovery of the filing fee paid for this application.

The tenant and the landlord's agents, property managers for the residential property, attended, the hearing process was explained and they were given an opportunity to ask questions about the hearing process.

Thereafter the participants were provided the opportunity to present their evidence orally and to refer to relevant evidence submitted prior to the hearing, and make submissions to me.

I have reviewed all relevant evidence before me that met the requirements of the Residential Tenancy Branch Rules of Procedure (Rules); however, I refer to only the relevant evidence regarding the facts and issues in this decision.

Preliminary Issue

At the outset of the hearing, no issues were raised regarding service of the application.

The tenant submitted she received the landlord's evidence, but that it was served less than 14 days prior to the hearing. The tenant confirmed that she had a chance to review the evidence and the tenant was informed that I would consider the landlord's evidence for this dispute.

The landlord's agents said that they have not received the tenant's evidence. The tenant said that she served her evidence by registered mail and had evidence that it was collected. The tenant confirmed the landlord's address to which it was delivered, which was the landlord's address.

I find the tenant supplied sufficient evidence that she complied with her obligation to serve the landlord her evidence as required and it is accepted for purposes of this hearing.

Issue(s) to be Decided

Is the tenant entitled to an order requiring the landlord to comply with the Act, the Regulations, or the tenancy agreement and to recovery of the filing fee paid for this application?

Background and Evidence

The tenant submitted that this tenancy began in December 2016, with a former landlord. A written tenancy agreement was provided into evidence, which shows that the tenancy was extended on June 1, 2017, for a fixed term through November 30, 2017. The undisputed evidence is that this tenancy continues on a month to month basis. The tenancy agreement also shows that the tenant paid a security deposit and a pet damage deposit of \$525.00 each.

The tenant submitted that her current monthly rent is \$1,122.00.

The evidence shows that the current owner, being represented by these landlord's agents, took ownership of the residential property in June 2019.

The tenant said that she moved into the rental unit with a cat, and in December 2017, she obtained a dog, who has been living with her since then.

The tenant submitted that she asked her previous landlord, a property management company representing the owner at the time, if it was okay if she had a dog. According to the tenant, the landlord gave her approval as the building was a pet-friendly building and because she had paid a pet damage deposit. The tenant said the next property manager representing the former owner also had no issue with the tenant having a dog.

The tenant submitted that when the current owners were viewing the property to buy, the representatives came into her rental unit where her dog was and said nothing about having a dog. The tenant also said there was a video shot in her rental unit for the new owners, with her dog in the rental unit. The tenant submitted that the new owner, the current landlord, was fully aware that the tenant had a dog living with her and never expressed that it would be a problem.

The tenant submitted that her neighbours have written letters in support of her dog and that they like having the dog in the residential property.

The tenant submitted copies of the letters.

Landlord's response-

The landlord submitted that they received a verbal complaint by a tenant in the building about the "noise and smell" of the dog.

The landlord submitted that the tenant is prohibited from having a dog in the rental unit per the terms of the written tenancy agreement and as the tenant failed to comply, they issued her a warning letter on September 4, 2019. Both parties submitted a copy of the letter.

The landlord submitted that they have asked for, but have not received a response from the previous property manager as to whether the tenant had permission to have a dog in the rental unit.

The landlord submitted since the tenant is not authorized to have a dog living in the rental unit, she is required to get rid of her dog.

The landlord submitted that they have tried to arrange an inspection of the rental unit with the tenant, but she has not allowed an inspection, despite providing dates and times.

During their testimony, the landlord disclosed that they have filed a complaint with the RCMP, who has launched an investigation.

In response to my inquiry, the landlord said the tenant has cannabis in her rental unit and they are striving to have a crime-free property.

Tenant's rebuttal-

The tenant denied preventing an inspection of the rental unit, and told the landlord's agent that she has a flexible schedule.

The tenant said she has been given multiple notices of entry to the rental unit, one from 9:00 a.m. until 7:00 p.m. for 7 days, another for 8:30 a.m. to 5:30 p.m. for 5 days, and another from 9:00 a.m. until 6:00 p.m. for 2 days.

The tenant pointed out that her neighbour's would not complain about her dog, as they wrote letters in support.

The tenant submitted that the only time she uses cannabis is when she walks her dog.

Analysis

After reviewing the relevant evidence, I provide the following findings, based upon a balance of probabilities:

In this case, the tenant has submitted that she should be allowed to keep her dog with her in the rental unit.

I find the tenant submitted sufficient evidence to show that she had permission to keep an additional pet in the rental unit, her dog, as he has been living in the rental unit since December 2017. I find it reasonable that had the tenant not had the permission of the landlord at the time, the landlord would have taken steps to have the dog removed. Instead, the evidence shows that the dog lived there at the time the new landlord purchased the residential property.

I find the tenant had the right to rely on the actions of the previous landlord that having a dog was not an issue. If the new landlord had an issue with the dog, I find it reasonable that the former and current owner discuss the issue. Instead, the new landlord accepted the tenancy as is.

Due to the above, I determine by the former landlord's actions and conduct that they accepted the tenant's dog in the rental unit, and I find the landlord who purchased the residential property is not now able to rely on the clause in the tenancy agreement prohibiting the tenant to have her dog live with her. I find it is not fair to the tenant or her

dog to seek enforcement of this term after close to 2 years after the dog was allowed to live there.

Therefore, pursuant to section 62(2), I order that the tenant is allowed to keep her dog living with her in the rental unit for the duration of this tenancy and I order the landlord to not make any further attempts to enforce this term of the tenancy agreement, as to the tenant's present dog.

As the tenant's application had merit, I grant the tenant recovery of her filing fee of \$100.00.

I order the tenant to deduct \$100.00 from her next, or a future month's rent in satisfaction of recovery of her filing fee. The tenant should advise the landlord when she makes this deduction and the landlord is not permitted to serve the tenant with a 10 Day Notice to End Tenancy for Unpaid Rent ("Notice") for a rent deficiency when the tenant makes this deduction.

Other matters-

Additionally, during the hearing, I heard evidence from the parties which prompts me to issue cautions to the landlord.

Section 28 of the Act states that a tenant is entitled to quiet enjoyment including, but not limited to, rights to reasonable privacy, freedom from unreasonable disturbance, and exclusive possession of the rental unit subject only to the landlord's right to enter the rental unit in accordance with section 29 of the Act.

Pursuant to section 29 of the Act, a landlord may not enter a tenant's rental unit without giving a proper written notice of entry to do so. Among other requirements, section 29(1)(b)(ii) of the Act requires that the notice of entry must be made at least 24 hours prior to the planned entry, contain the purpose for entering, which must be reasonable, and provide a date and time of entry, which must be between 8 a.m. and 9 p.m.

I find that issuing a tenant notices of entries for as long as 7 days in length for up to 10 hours a day can be interpreted as not complying with this section of the Act. I find these notices can be interpreted to be open-ended for at least 7 days, which can be interpreted to be unreasonable. I find a reasonable interpretation of the Act would be to provide the tenant with a specific day and a specific time of entry, to the extent possible.

Further, I find the landlord's evidence on launching a RCMP investigation on the tenant to be vague. The landlord implied that the possible issue is possession of cannabis, nothing further. The landlord is reminded they should become familiar with the current law in Canada of the use and possession of cannabis in order to comply with section 28 of the Act.

Conclusion

The tenant's application is granted as I have ordered that she is allowed to keep her present dog with her in the rental unit for the duration of this tenancy.

I have granted the tenant recovery of her filing fee of \$100.00.

I have issued cautions to the landlord.

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 12, 2019

Residential Tenancy Branch