



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC

Introduction

The tenant filed an Application for Dispute Resolution (the “Application”) on December 27, 2019 seeking an order to cancel the One Month Notice to End Tenancy (the “One Month Notice”) for cause. The matter proceeded by way of a hearing pursuant to section 74(2) of the *Residential Tenancy Act* (the “Act”) on February 3, 2020. In the conference call hearing I explained the process and offered each party the opportunity to ask questions.

The tenant and the landlord attended the hearing, and each was provided the opportunity to present oral testimony and make submissions during the hearing. In the hearing I clarified the correct name of the Respondent’s organization, and I have amended the tenant’s Application to include the correct name.

The landlord confirmed receipt of the Notice of Dispute Resolution, delivered by the tenant in person, as well as a copy of the documentary evidence presented by the tenant.

Issue(s) to be Decided

Is the tenant entitled to an order that the landlord cancel the One Month Notice?

If unsuccessful in this Application, is the landlord entitled to an Order of Possession of the rental unit?

Background and Evidence

I have reviewed all evidence before me; however, only the evidence and submissions relevant to the issues and findings in this matter are described in this section.

The tenant submitted the following relevant material:"

- A copy of the Tenancy Agreement signed August 19, 2015, with a tenancy start date of September 1, 2015. This document sets out the monthly rent at \$425.00, and a security deposit of \$212.50. This document has the notations of the tenant in margins and throughout the body of the document text.
- A copy of the One Month Notice dated December 12, 2019, page 1 of 2. This document gives the specific date on which the tenant must move out of the rental unit: January 31, 2020.
- A copy of the Rules and Regulations (the "Rules") for the residential property. This document was signed by the tenant and an agent of the landlord on August 19, 2015. Part 1 contains the statement: "No pets may be kept on the premises". This document has the handwritten notations of the tenant present throughout. These notations include:
 - The rental unit is not a "suite" as stated in the Rules – similarly "premises" necessarily excludes the individual rental unit. This is to specify that pets are not allowed "on the premises" in contrast to a pet present in the rental unit;
 - The Rules are not "initialled" as specified for changes or additions to the tenancy agreement;
 - The entry by the landlord/caretaker into the unit was not for a purpose specified in the Rules.
- A copy of the 'Breach Letter' dated November 28, 2019, signed by an agent of the landlord. This letter informs the tenant of a breach against the Tenancy Agreement for keeping a guinea pig (the "pet") in the suite, with reference to the Rules. The letter, in this hearing gives information and instruction on the clause in the Rules governing pets, a demand to "immediately remove any animal(s)", with notice of a subsequent visit on December 3, 2019. This document also has the tenant's notations on it.

The tenant submitted on their Application that they received the One Month Notice on December 12, 2019. This Application is dated December 20, 2019, submitted to the Residential Tenancy Branch on December 23, 2019.

In the hearing, the tenant spoke to the issue with the following testimony, in varying degrees of detail:

- The tenant obtained the guinea pig in September 2019 after she spoke to the President of the Housing Association involved – the President “didn’t see that it would be a problem”.
- The President and the agent of the landlord entered the unit initially at the tenant’s request on another issue, and “[said] they didn’t see it” at that time.
- The tenant drew the distinction between a “suite” as referred to in the Rules and her own rental unit.
- Three other people in the building have pets, and this guinea pig is contained in an aquarium. As such, this does not interfere with the quiet enjoyment of the other tenants.
- The time from the letter of November 26 to the following inspection visit on December 3 in effect leaves “four days” to find the pet another home.
- She lives alone and her family members live in another province.

The landlord (as here represented by an agent) did not provide documentary evidence. They spoke to the history of the issue, and how it first came to light after a housekeeping routine visit to the unit on November 26, 2019. When entering for a visit to check on a repair, with agreement of the tenant, he did not initially see the pet in its place in the tabletop aquarium. Upon being advised by the housekeeping staff of the pet, he discussed the issue with the tenant on November 28, 2019, then subsequently conducted an inspection on December 3, 2019.

The visit on November 28, 2019 was matched with a letter to the tenant of that same date. The landlord also spoke to efforts made to ask the tenant to come up with an alternate arrangement for the pet.

Analysis

Section 47 of the *Act* states, in part:

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;

...

(3)A notice under this section must comply with section 52 [*form and content of notice to end tenancy*].

Section 52 states:

- 52** In order to be effective, a notice to end a tenancy must be in writing and must
- (a)be signed and dated by the landlord or tenant giving the notice,
 - (b)give the address of the rental unit,
 - (c)state the effective date of the notice,
 - (d). . . state the grounds for ending the tenancy,
. . .and
 - (e)when given by a landlord, be in the approved form.

In this hearing, the evidence was submitted by the tenant -- this did not include the second page of the One Month Notice. The landlord did not provide documentary evidence; therefore, the second page is not in the evidence. In this matter, the onus is on the landlord to provide they have cause to end the tenancy. The landlord spoke to cause to end the tenancy in oral testimony; however, there is not sufficient evidence to show the One Month Notice is valid and compliant with the provisions of section 52(d). Similarly, there is no evidence to show the second page of the Notice was presented to the tenant in proper fashion. The tenant's evidence was also missing page two; based on this, I find it more likely than not that the second page was not served to the tenant.

The landlord did not provide full details of the One Month Notice. Without the second page, I find the document does not comply with section 52, and thus the core of section 47 is not established.

For these reasons, I order the One Month Notice to be cancelled. I find the One Month Notice issued by the landlord on December 12, 2019 does not comply with the requirements set out in section 52.

Conclusion

For the reasons above, I order the One Month Notice issued on December 12, 2019 is cancelled and the tenancy remains in full force and effect.

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: February 10, 2020

Residential Tenancy Branch