Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC LAT

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 change the locks to the rental unit pursuant to section 70;

The tenant did not attend this hearing, although I left the teleconference hearing connection open until 10:07 am in order to enable the tenant to call into this teleconference hearing scheduled for 9:30 am. The respondent DS attended the hearing and was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. I also confirmed from the teleconference system that DS and I were the only ones who had called into this teleconference.

DS testified that he served the tenant with his documentary evidence by email, as permitted by *Residential Tenancy (COVID-19) Order*, MO M089 (*Emergency Program Act*) made March 30, 2020 (the "**Emergency Order**"), and by leaving the evidence at the door of the rental unit. Accordingly, I find that the tenant has been served with the necessary documents.

Preliminary Issue – Identity of Landlord

The tenant named DS as the respondent landlord in this application. DS is an employee of the property management company hired by the entity with whom the tenant entered into a tenancy agreement with (full name listed on the cover page of this decision, herein after the "landlord"). Accordingly, I amend the tenant's application removing DS as a respondent and substituting the landlord. DS confirmed he had authority to represent the landlord as the hearing.

Preliminary Issue – Effect of Tenant's Non-Attendance

Rule of Procedure 6.6 states:

> **6.6 The standard of proof and onus of proof**
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> The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed.
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> The onus to prove their case is on the person making the claim. In most circumstances this is the person making the application. However, in some situations the arbitrator may determine the onus of proof is on the other party. For example, the landlord must prove the reason they wish to end the tenancy when the tenant applies to cancel a Notice to End Tenancy.

Accordingly, the tenant bears the onus to prove that she is entitled to an order that the locks to the rental unit be changed. The landlord bears the onus to prove tha the Notice is valid.

As the tenant failed to attend the hearing, I find that she has failed to discharge her evidentiary burden to prove that she is entitled to an order that the locks be changed. Pursuant to Rule of Procedure 7.4, she must attend the hearing and present her evidence for it to be considered. As this did not occur, I have not considered any of the documentary evidence submitted by the tenant to the Residential Tenancy Branch in advance of the hearing.

As the landlord bears the onus to prove that the Notice is valid, the balance of this decision will address that issue, despite the tenant's non-attendance.

Issues to be Decided

Is the tenant entitled to an order cancelling the Notice?

Background and Evidence

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

The parties entered into a written, month to month tenancy agreement starting September 1, 2015. Monthly rent is $425.00 and is payable on the first of each month.

The tenant paid the landlord a security deposit of $212.50, which the landlord continues to hold in trust for the tenant.

The rental unit is located in an independent seniors' living facility.

In addition to receiving the tenancy agreement, the tenant was provided with the Rules and Regulations of the residential property, which the tenant signed on August 15, 2019, and a copy of the Tenant Handbook.

The Rules and Regulations contain the following term:

> No pets may be kept on the premises.

The Tenant Handbook contains the following term:

> [The residential property] has a **No Pet** Policy for suite-specific pets of **any** kind. However, pets *may* sometimes be allowed to visit, as long as they are well-behaved, do not threaten residents, do not cause allergies or obnoxious smells, are kept controlled and on a leash, etc.
>
> [emphasis original]

DS testified that these rules were important to the residential property, as the occupants were all seniors, and there are concerns with allergies, cleanliness, and the ability of occupants to adequate care for the pets. He noted that the landlord provides cleaning services to the occupants, as some occupants are unable to properly clean their rental units.

DS testified that, in November 2019, the landlord's agents discovered, upon entering the rental unit to clean it, that tenant was in possession of a guinea pig.

DS testified he verbally advised the tenant that this was a breach of the tenancy agreement. He testified that he followed this conversation up by sending a written notice of breach to the tenant on November 28, 2019. The tenant was advised that she must remove the pet from the rental unit.

DS testified that an agent of the landlord conducted an inspection of the rental unit on December 3, 2019 and discovered that the pet remained.

The landlord served a one month notice to end tenancy for cause on the tenant on December 12, 2019. The tenant disputed this notice, and the matter came to arbitration on February 7, 2020 (file number 31061615). The presiding arbitrator cancelled the notice on procedural grounds. He made no findings as to the substantive merits of the case.

On February 19, 2020, DS again spoke with the tenant about removing the pet from the rental unit, and followed this discussion up, on February 20, 2020, with another letter advising the tenant of her breach of the tenancy agreement by keeping the pet in the rental unit and requiring her to immediately remove it from the residential property. This letter was entered into evidence by the landlord.

The landlord's agents conducted another inspection of the rental unit on February 25, 2020 and discovered that the pet remained in the rental unit. The landlord submitted photos of the pet in the rental unit taken during the inspection confirming this.

On February 27, 2020, DS personally served the tenant with the Notice. It specified the reason for issuing the notice as:

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

The Notice attached an addendum setting out the events listed above.

The tenant disputed the Notice on March 9, 2020.

DS testified that, to his knowledge, the tenant has not removed the guinea pig from the rental unit.

Analysis

Timing of Tenant's Dispute

The Act requires that a tenant dispute a One Month Notice to End Tenancy within 10 day of being served with it. I find that the tenant was served with the Notice on February 27, 2020. 10 Days after February 27, 2020 is March 8, 2020. However, March 8, 2020 is a Sunday, the Service BC Offices and RTB Offices are not open. Rule of Procedure 1 states:

> If the time for doing an act in a government office (such as the Residential Tenancy Branch or Service BC) falls or expires on a day when the office is not open during regular business hours, the time is extended to the next day that the office is open.

Accordingly, the tenant had until March 9, 2020 to dispute the Notice. As such, I find she disputed the Notice within time.

Validity of the Notice

Section 47(1)((h) states:

Landlord's notice: cause

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;

I find that the Rules and Regulations and the Tenant Handbook form part of the tenancy agreement, as they were provided to the tenancy at the start of the tenancy, and as the tenant signed the Rules and Regulations prior to moving into the rental unit.

I find that the Rules and Regulations and the Tenant Handbook both contain terms which unambiguously prohibit the tenant from keeping a pet in the rental unit.

Based on the testimony of DS and the photographic evidence, I find that the tenant kept and continues to keep a guinea pig in the rental unit. As such, I find that she has breached and continues to breach the tenancy agreement.

I also find that the landlord has given the tenant two written notices advising the tenant that she is in breach of the tenancy agreement and permitted her a reasonable amount of time correct the breach.

Accordingly, I must determine if the terms in the Rules and Regulations and the Tenant Handbook are “material” terms of the tenancy agreement. If they are, I must find that the conditions of section 47(1)(h) are satisfied and the Notice is valid.

Policy Guideline 8 states:

Material Terms

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.

To determine the materiality of a term during a dispute resolution hearing, the Residential Tenancy Branch will focus upon the importance of the term in the overall scheme of the tenancy agreement, as opposed to the consequences of the breach. It falls to the person relying on the term to present evidence and argument supporting the proposition that the term was a material term.

The question of whether or not a term is material is determined by the facts and circumstances surrounding the creation of the tenancy agreement in question. It is possible that the same term may be material in one agreement and not material in another. Simply because the parties have put in the agreement that one or more terms are material is not decisive. During a dispute resolution

> proceeding, the Residential Tenancy Branch will look at the true intention of the parties in determining whether or not the clause is material.

I note that, in the Tenant Handbook, the landlord both **bolded** and <u>underlined</u> the words "No Pet" in the no pet clause. The only other clause which has this same level of emphasis is the No Smoking clause. I find that the use of such emphasis indicates that such a clause was of particular importance to the landlord.

I also accept DS's reasoning as to why the No Pet policy was important to the landlord. I find that the presence of pets inside the residential property may lead to an increase risk of health and cleanliness issues at the residential property. Given the nature of the occupants (seniors) it is reasonable for the landlord to consider these factors important.

I am not required to conduct an analysis of whether or not the No Pet policy is a reasonable one or if it is overly broad. Under the Act, landlords are permitted to prohibit a tenant from keeping a pet in a rental unit. I need only determine that such a term is material to the tenancy agreement.

Given the emphasis used in the clause itself, the fact that it was repeated in both the Rules and Regulations and the Tenant Handbook, and the reasonable concern the landlord has for the cleanliness of the residential property and the health of its occupants, I find that the No Pets clauses are material terms of the tenancy agreement.

As stated above, the Notice is therefore valid. I dismiss the tenant's application to cancel the Notice.

Section 55 of the Act states:

> **Order of possession for the landlord**
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> 55(1) 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
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> (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 that the form of the Notice complies with section 52 of the Act.

As I have dismissed the tenant's application, and I have found that the Notice complies with section 52 of the Act, I find that the landlord is entitled to an order of possession effective May 1, 2020 at 1:00 pm.

I note that the Emergency Order permits an arbitrator to issue an order of possession if the notice to end tenancy the order of possession is based upon was issued prior to March 30, 2020 (as per section 3(2) of the Emergency Order).

However, per section 4(3) of the Emergency Order, a landlord may not file an order of possession at the Supreme Court of BC unless it was granted pursuant to sections 56 (early end to tenancy) or 56.1 of the Act (tenancy frustrated). The order of possession granted above is not issued pursuant to either section 56 or 56.1 of the Act.

Conclusion

I dismiss the tenant's application.

Pursuant to section 55 of the Act, I order that the tenant deliver vacant possession of the rental unit to the landlord by May 1, 2020 at 1:00 pm.

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: April 23, 2020

Residential Tenancy Branch