



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC

Introduction

This hearing was convened as a result of the Tenant's Application for Dispute Resolution ("Application") under the *Residential Tenancy Act* ("Act") to cancel a One Month Notice to End Tenancy for Cause dated January 15, 2020 ("One Month Notice").

The Tenant and the Landlord appeared at the teleconference hearing and gave affirmed testimony. I explained the hearing process to the Parties and gave them an opportunity to ask questions about the hearing process. During the hearing the Tenant and the Landlord were given the opportunity to provide their evidence orally and to respond to the testimony of the other Party. I reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch ("RTB") Rules of Procedure ("Rules"); however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Neither Party raised any concerns regarding the service of the Application for Dispute Resolution or the documentary evidence. Both Parties said they had received the Application and/or the documentary evidence from the other Party and had reviewed it prior to the hearing.

Preliminary and Procedural Matters

The Parties provided their email addresses at the outset of the hearing and confirmed their understanding that the Decision would be emailed to both Parties and any Orders sent to the appropriate Party.

In describing the hearing process to the Parties, I advised them that pursuant to Rule 7.4, I would only consider their written or documentary evidence to which they pointed or directed me in the hearing.

When a tenant applies to cancel a notice to end tenancy issued by a landlord, section 55 of the Act requires that I consider whether the landlord is entitled to an order of possession. This is the case if I dismiss the application and if the landlord has issued a notice to end tenancy that is compliant with section 52 of the Act as to form and content.

Issue(s) to be Decided

- Should the One Month Notice be cancelled or confirmed?
- Is the Landlord entitled to an order of possession?

Background and Evidence

The Parties agreed that the periodic tenancy began on February 15, 2019, with a monthly rent of \$900.00, due on the first day of each month. The Parties agreed that the Tenant paid the Landlord a security deposit of \$150.00, and a pet damage deposit of \$150.00.

The Landlord served the Tenant with a One Month Notice that was signed and dated January 15, 2020.

The Landlord said in the hearing, that he and a witness served the One Month Notice on the Tenant on January 12, 2020, in person, although this information is missing on the One Month Notice.

The One Month Notice included the rental unit address, and it had an effective vacancy date of February 15, 2020, which is automatically corrected to February 29, 2020 by section 53 of the Act. The ground checked off for issuing the One Month Notice was that the Tenant: "Significantly interfered with or unreasonably disturbed another occupant or the landlord". The Landlord also wrote the following in the "Details of Cause" section of the One Month Notice:

Failure to comply to a no pet rule (allowance) set by the landlord, on January 10, 2020. Landlord told the tenant his pet rabbit could be housed in laundry room for a limited time due to the colder weather. But in no way to be in suite. Tenant was housing in suite significant disturbance followed.

In the hearing, the Landlord said:

As far as the dispute it's the rabbit. I told him that by no means will the rabbit be in my house. I don't care how clean it is. As far as the affidavit from [K.S.], she wrote that advertisement twice. She thought that was what she wrote.

The Landlord submitted a statement dated March 1, 2020 from K.S. who stated:

March 1, 2020

To whom it may concern

I, [K.S.], created and posted the advertisement for [the Landlord], regarding his basement suite rental on [a well-known advertising website] last year. I took photos of his place and [the Landlord] told me what to say for it. I uploaded the photos and the information about his rental. I posted 'pets considered' or 'no pets' as per his instructions and also posted 'furnished apartment' on the advertisement. The photos uploaded had pictures of the bed, couch, coffee table. The apartment was fully furnished.

Feel free to contact me for any further information.

[writer signed and printed name, occupation and telephone number]
("K.S.'s Statement")

The Landlord went on in the hearing to say:

The police have been here before because of [the Tenant]. He likes confrontation. He kept telling me that his ex-wife has the original article from [the advertising website]; we can use that for the arbitration. [K.S.] wasn't sure if we said 'pets considered'. Why didn't he mention the dog was a duty dog from the start? He's very domineering and he doesn't like to lose. The bottom line was the apartment was advertised as this way, and he said he had a copy of it.

Neither Party submitted a copy of the advertisement for the rental unit into evidence.

In the hearing, the Tenant said:

Again, this hearing is about ['D.', (the rabbit)]. It's about the amount of time he was in my apartment, and it was only because of my cleaning the cage and making room. I didn't break any rules. How [the Landlord] is talking about me is

amazing. Again, it was I who asked him to bring someone into the apartment with him when he served my notice, because this person would make sure [the Landlord] wouldn't get out of control.

In the hearing, the Parties described that the Tenant's rabbit was kept outside, until the Tenant feared that an impending storm would make it too cold for the animal to be outside. The Parties agreed that the Landlord said the Tenant could bring the rabbit in to the laundry room, but not into the suite. The Tenant said he had asked the Landlord for this permission on the morning of February 10, 2020, but that he did not start the process to bring the rabbit in until approximately 5:30 p.m. that day. The Tenant said that the rabbit was in the rental unit only while he cleaned the cage and made room for it in the laundry room.

Again, as noted above, the Landlord said: "As far as the dispute it's the rabbit. I told him that by no means will the rabbit be in my house."

Analysis

Based on the documentary evidence and the testimony provided during the hearing, and on a balance of probabilities, I find the following.

Section 47 of the Act allows a landlord to end a tenancy for cause:

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

. . .

(d) the tenant or a person permitted on the residential property by the tenant has

(i) significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property,

. . .

Rule 6.6 sets out the standard of proof and the onus of proof in dispute resolution proceedings, as follows:

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.

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.

In this case, the Landlord alleged that the Tenant brought a rabbit into the rental unit without the Landlord's permission and that this caused a disturbance. The Landlord said the Tenant failed "to comply to a no pet rule (allowance) set by the landlord, on January 10, 2020." However, in terms of imposing rules on the Tenant, I note the tenancy began nearly a year prior to that date on February 15, 2019. Further, I find that the Landlord did not provide sufficient evidence that he advertised the rental unit as a "no pet" tenancy. Rather, K.S.'s Statement indicates that the advertisement may have said: "pets considered". In addition, the Landlord allowed the Tenant to have a dog in the rental unit, although he said this was because the Tenant told him it was a duty dog. Further, the Landlord accepted a pet damage deposit from the Tenant, which contradicts the Landlord's position that no pets were allowed. Further, the Landlord allowed the Tenant to have the rabbit in a cage outside, and agreed that the Tenant could temporarily house the rabbit in a cage in the laundry. I find that this is what the Tenant was preparing to do, when the Landlord discovered that the rabbit was temporarily in the rental unit.

Neither Party submitted a tenancy agreement for my consideration, or indicated that it contained a "no pets" clause. I find that the Landlord allowed the Tenant to have pets in the residential property by his actions and statements, but that he became uncomfortable with having the rabbit in the house, which I find is not a ground for evicting someone. I find that the Landlord provided insufficient evidence to establish on a balance of probabilities that the Tenant, "Significantly interfered with or unreasonably disturbed another occupant or the Landlord".

When I consider all the evidence before me overall, I find that the Landlord has not provided sufficient evidence to meet his burden of proof on a balance of probabilities to support the validity of the One Month Notice.

I also find that the One Month Notice issued by the Landlord does not comply with section 52 of the Act as to form and content, as it does not indicate how or when it was served on the Tenant. Given the above, I find that the Landlord is not entitled to an

Order of Possession in this set of circumstances. I, therefore, cancel the One Month Notice and I find that the tenancy will continue, until ended in accordance with the Act.

Conclusion

The Tenant is successful in his Application to cancel the One Month Notice. The One Month Notice is cancelled and is of no force or effect. The Landlord did not provide sufficient evidence to support the One Month Notice, nor did he complete the required contents of the One Month Notice, having failed to state when and how it was served on the Tenant. The Landlord is not entitled to an order of possession. The tenancy will continue until ended in accordance with the Act.

This decision is final and binding on the Parties, unless otherwise provided under the Act, and 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 15, 2020

Residential Tenancy Branch