



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Code CNC

Introduction

This hearing was convened as a result of the Tenant's Application for Dispute Resolution, made on January 31, 2020 (the "Application"). The Tenant applied for an order cancelling a One Month Notice to End Tenancy for Cause, dated January 19, 2019 (the "One Month Notice"), pursuant to the *Residential Tenancy Act* (the "Act").

The Tenant and the Landlord attended the hearing and provided affirmed testimony.

The Tenant testified the Notice of Dispute Resolution Proceeding package was served on the Landlord by registered mail. The Landlord acknowledged receipt. The Landlord testified the documentary evidence upon which he intended to rely was served on the Tenant by registered mail. The Tenant acknowledged receipt. No issues were raised with respect to service or receipt of the above documents during the hearing. The parties were in attendance or were represented and were prepared to proceed. Therefore, pursuant to section 71 of the *Act*, I find the above documents were sufficiently served for the purposes of the *Act*.

The parties were given a full opportunity to present evidence orally and in written and documentary form, and to make submissions to me. I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure, and to which I was referred. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue to be Decided

Is the Tenant entitled to an order cancelling the One Month Notice?

Background and Evidence

The parties agreed the tenancy began on October 1, 2018. Rent is due in the amount of \$900.00 per month. The Tenant paid a security deposit of \$450.00, which the Landlord holds.

The Landlord testified the One Month Notice was served on the Tenant in person by mail on January 20, 2020. The Tenant confirmed receipt on January 29, 2020.

The One Month Notice was issued on the basis that the Tenant breached a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so. Specifically, the Landlord testified that the Tenant keeps pets in the rental unit despite the terms of the tenancy agreement. The Landlord referred to the tenancy agreement which does not include a term that pets are not permitted in the rental unit. However, the Landlord noted that a pet damage deposit was not received from the Tenant.

The Landlord also testified that it was communicated to the Tenant before the tenancy began that pets are not permitted in the rental unit. The Landlord submitted a copy of a text message exchange in which the Tenant advised she does not have any pets.

The Landlord also testified that in a text message dated November 7, 2018 the Tenant asked to have a dog in the rental unit. On November 15, 2018, the Tenant asked via text message if she could have a cat in the rental unit. The Landlord denied the requests on the basis that fleas in the unit had just been treated. The Landlord also referenced the cost he has incurred over the years to address damage caused by pets.

More recently, the Landlord discovered that the Tenant keeps guinea pigs in the rental unit. Accordingly, in a letter dated December 29, 2019 the Landlord advised that the animals need to be relocated by January 15, 2020 or the tenancy could be in jeopardy. On February 20, 2020 the Landlord inspected the rental unit and observed that the guinea pigs were still in the rental unit. A photograph taken on that date was submitted in support. The Landlord testified the pets have been permitted to walk around the rental unit outside their cage. The Tenant acknowledged this occurred on one occasion.

In reply, the Tenant testified that the text message dated November 7, 2018 requesting a dog was not from her. This was not denied by the Landlord. In addition, the Tenant testified that other tenants are permitted to have pets and that she feels discriminated against.

The Landlord submitted that the terms of the tenancy are determined by the contract between them, not based on what other tenants maybe permitted to do.

Analysis

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

Section 47(1)(h) of the *Act* permits a landlord to take steps to end a tenancy when a tenant has failed to comply with a material term and has not corrected the situation within a reasonable time after the landlord gives written notice to do so. Section 47(4) confirms that a tenant who receives a notice to end tenancy under this section has 10 days to dispute the notice by making an application for dispute resolution. In this case, I find that the Tenant received the One Month Notice on January 29, 2020 and disputed it on time on January 31, 2020.

I find there is sufficient evidence before me to uphold the One Month Notice. I accept that the communication between the parties before the tenancy began established that the Tenant did not have any pets. I also accept that in reliance on the Tenant's advice that she did not have pets the Landlord did not require a pet damage deposit. Further, I find the Tenant was aware pets are not required in the rental unit after her request dated November 15, 2018 was denied because of issues caused by pets of the previous tenants. I find that the evidence confirms that the Tenant was aware pets are not permitted in the rental unit. I also find the above evidence, particularly that concerning the Landlord's denial of the Tenant's request and the reasons provided, indicate it is a material term of the tenancy. With respect to the Tenant's assertion that she feels discriminated against because other tenants have pets, I find the terms of other tenancy agreements do not grant the Tenant an opportunity to ignore the terms of her own tenancy agreement.

Considering the above, I find that the Application is dismissed without leave to reapply. When a tenant's application to cancel a notice to end tenancy is dismissed and the notice complies with section 52 of the *Act*, section 55 of the *Act* requires that I grant an order of possession to a landlord. The language in the *Act* is mandatory. Having reviewed the One Month Notice, I find it complies with section 52 of the *Act*. Accordingly, I find the Landlord is entitled to an order of possession, which will be effective on April 30, 2020 at 1:00 P.M.

Conclusion

The Application is dismissed, without leave to reapply.

By operation of section 55(1) of the *Act*, I grant the Landlord an order of possession. The order will be effective on April 30, 2020 at 1:00 P.M. The order may be filed in 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: April 6, 2020

Residential Tenancy Branch