Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Eagle Run Investments Ltd
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC, RP, RR, FFT

Introduction

This hearing dealt with an Application for Dispute Resolution (the Application) that was filed by the Tenant under the Residential Tenancy Act (Act), seeking:

- Cancellation of a One Month Notice to End Tenancy for Cause (the "One Month Notice");
- A rent reduction;
- An order for the Landlord to do repairs; and
- Recovery of the filing fee.

I note that section 55 of the *Act* requires that when a tenant submits an Application seeking to cancel a notice to end tenancy issued by a landlord, I must consider if the landlord is entitled to an order of possession if the Application is dismissed and the landlord has issued a notice to end tenancy that is compliant with section 52 of the *Act*.

The hearing was convened by telephone conference call and was attended by the Tenant, the Tenant's support person, and two agents for the Landlord M.K. and R.P. (the Agents), all of whom provided affirmed testimony. The Agents acknowledged service of the Notice of Dispute Resolution Proceeding Package, including a copy of the Application and the Notice of Hearing. The parties were provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing.

Although I have reviewed all evidence and testimony before me that was accepted for consideration in this matter in accordance with the Residential Tenancy Branch Rules of Procedure (Rules of Procedure), I refer only to the relevant and determinative facts, evidence and issues in this decision.

At the request of the Tenant, a copy of the decision and any orders issued in their favor will be made available for pick-up at the Service BC location of their choosing. At the request of the Agents, copies of the decision and any orders issued in favor of the Landlord will be emailed to R.P. at the email address provided in the Application.

Preliminary Matters

Preliminary Matter #1

In their Application the Tenant sought multiple remedies under multiple unrelated sections of the *Act*. Section 2.3 of the Rules of Procedure states that claims made in an Application must be related to each other and that arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply.

As the Tenant applied to cancel a One Month Notice, I find that the priority claims relate to whether the tenancy will continue or end and as the other claims are not sufficiently related to the One Month Notice or continuation of the tenancy, I exercise my discretion to dismiss the following claims by the Tenant with leave to reapply:

- A rent reduction; and
- An order for the Landlord to do repairs.

As a result, the hearing proceeded based only on the Tenant's Application seeking cancellation of the One Month Notice and recovery of the filing fee.

Preliminary Matter #2

Although the Tenant acknowledged service of the Landlord's documentary evidence, the Agents denied receipt of any documentary evidence from the Tenant, other than the Notice of Dispute Resolution Proceeding Package.

The Tenant stated that they sent their documentary evidence to the Landlord by registered mail on July 28, 2020, and August 1, 2020. The Tenant provided me with the address used for the registered mail, which is documented on the cover page of this decision, and the Agents confirmed that this is the correct address for service for the Landlord. The Tenant also provided me with the registered mail tracking numbers, which are documented on the cover page of this decision, and copies of the registered mail receipts.

The Canada Post tracking website confirms that the registered mail packages were sent as described above, that notice cards were left of July 28, 2020, and July 30, 2020, that final notice cards were left on August 1, 2020, and August 7, 2020, and that both packages were returned to sender as the recipient failed to pick them up.

Residential Tenancy Policy Guideline (the Policy Guideline) #12 states that where a document is served by Registered Mail, the refusal of the party to accept or pick up the Registered Mail, does not override the deeming provision and that where the Registered Mail is deliberately not picked up, the receipt continues to be deemed to have occurred on the fifth day after mailing.

Although the Agents denied receipt of the above noted Registered Mail, they acknowledged that the address used by the Tenant for sending the Registered Mail is the correct address for service of the Landlord and provided no evidence or testimony regarding why this Registered Mail was not received. Based on the above, I find that the Tenant complied with section 88 (c) of the Act in relation to sending the Registered Mail, and pursuant to section 90 (a) of the Act and Policy Guideline #12, I therefore deem that the Registered Mail packages were received on August 2, 2020, and August 6, 2020, five (5) days after they were sent by registered mail, regardless of the Agents' testimony that they were not received.

As I have found above that the Tenant's documentary evidence was deemed served on the Landlord in accordance with the Act, and the dates of deemed service comply with the timelines set out under rule 3.14 of the Rules of Procedure, I therefore accept the Tenant's documentary evidence for consideration in this matter.

Issue(s) to be Decided

Is the Tenant entitled to cancellation of a One Month Notice?

Is the Tenant entitled to recovery of the filing fee?

Background and Evidence

The Agents stated that a One Month Notice was placed under the door of the rental unit on July 8, 2020. In the hearing the Tenant acknowledged receipt approximately three days later, on July 11, 2020.

The One Month Notice in the documentary evidence before me is signed and dated

July 7, 2020, has an effective date of August 31, 2020, and states that the tenancy is being ended because the Tenant or a person permitted on the property by the Tenant has put the landlords property at significant risk and because the Tenant has breached a material term of the tenancy agreement which has not been corrected within a reasonable time after being given written warning to do so.

In the details of cause section of the One Month Notice significant details were provided regarding why the One Month Notice was served.

The tenancy agreement in the documentary evidence before me states that the month to month tenancy commenced January 15, 2010, that rent in the amount of $560.00 is due on the first day of each month, and that a security deposit in the amount of $280.00 is to be paid by the Tenant. The tenancy agreement also contains a clause stating “No pets + No smoking” which appears to have been initialed by the Tenant and the original landlord.

There was no dispute between the parties in the hearing that the written tenancy agreement accurately reflects the terms of the tenancy agreement originally entered into or that pets were not permitted in the rental unit under the written tenancy agreement. However, during the hearing the parties agreed that the original landlord made several exceptions to the “no pets” rule for several occupants of the building, including the Tenant. The Agents stated that although the rental unit is located in a no-pets building, they agree that the Tenant was permitted one caged bird by the previous landlord and agree that the Tenant is therefore permitted one caged bird. However, the Agents argued that the Tenant was never permitted to have more than one caged bird and that their possession of 6 birds, one rabbit and one gecko is therefore a breach of a material term of the tenancy agreement. In support of this testimony the Agents provided correspondence from the previous Landlord stating that the Tenant was previously permitted only one caged bird, a copy of the tenancy agreement, and copies of several other tenancy agreements for other occupants of the building containing various pet related clauses.

When asked why they believe the pet restriction constitutes a material term of the tenancy agreement, the Agents stated that it is a no pets building, the rental unit is small, and there are carpets throughout the building. As a result, the Agents stated that they believe that the building and the rental unit are not suitable for pets and that having pets in the rental unit constitutes a health and safety hazard.

While the Tenant acknowledged that they were originally provided permission for only one caged bird, they stated that they later obtained verbal approval from the previous landlord to have their additional pets. The Tenant denied ever being told that there was a limit to the type or number of pets they were permitted to have or that any terms of their tenancy agreement relating to pets were material terms. The Tenant also argued that both the previous landlord and agents for the current Landlord have visited the rental unit numerous times over the years and have never taken issue with the type or the number of pets present, despite the fact that these pets have been there for 8-10 years. As a result, the Tenant stated that they were confused by the Landlord's position that their pets were not permitted and that they had breached a material term of the tenancy agreement. The Tenant also stated that they recently spoke with the previous landlord by phone in relation to this issue and were told by the them that it is possible they granted them permission for their pets and simply do not remember.

The Agents acknowledged that the Tenant's rental unit was entered numerous times throughout the tenancy by agents for both the previous and current landlords and agreed that an agent for the current Landlord saw several birds in the rental unit in May of 2018. The Agent M.K. acknowledged that they also personally observed either a guinea pig or a rabbit and two birds in the rental unit in the fall of 2019 and in February of 2020 and did not bring it to the attention of the Agent R.P. However, M.K stated that when they entered the rental unit on March 25, 2020, they were shocked by the number of pets present and immediately brought it to R.P.'s attention.

In addition to the above, the Agents argued that the Tenant's possession of the pets poses a significant risk of damage to the property, as blinds were previously damaged by a blanket hung on or near them for the sake of the birds, and that the plants and pet food the Tenant keeps in the rental unit are rodent attractants. Further to this, they argued that the Tenant has overloaded the balcony with plants and other items, causing a significant safety and damage risk to the rental unit and the building.

The Tenant denied having any rodent attractants in their rental unit and stated that they keep all of their food and their pets' food in sealed containers. Although the Tenant did not deny damaging the blinds, they stated that their pets have not caused damage to the rental unit themselves as they are always supervised when out of their cages. In support of this testimony the Tenant pointed to several photographs they state were taken of the area in which the cages are kept. Although the Tenant acknowledged having plants on the deck, one of which is quite large, they denied ever being told that the deck was overloaded or being asked to remove any of the plants, the majority of

which are small. Despite the above, the Tenant agreed that they would be amenable to removing the Large plant if asked to by the Landlord and provided with time to do so.

Documentary evidence was submitted by both parties in support of their positions.

Analysis

Based on the testimony of the parties, I find that the One Month Notice was served on the Tenant on July 11, 2020.

Section 47 of the Act states that a landlord may end a tenancy by giving notice to end the tenancy if the tenant or a person permitted on the residential property by the tenant has put the landlord's property at significant risk or 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.

Residential Tenancy Policy Guideline (Policy Guideline) #8 states that a material term of a tenancy agreement 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. Further to this, Policy Guideline #8 states that the facts and circumstances surrounding the creation of the tenancy agreement in question and the importance of the term in the overall scheme of the tenancy agreement, not the consequences of the breach, is what makes it a material term, and that the burden to prove that a term is material falls to the person relying on the term.

Although there is no dispute that the written tenancy agreement precludes pets, the parties agreed in the hearing that the original landlord made several exceptions to the “no pets” rule for several occupants of the property, including the Tenant. While the Agents argued that the rental unit is in a no-pets building I disagree as several occupants of the building, including the Tenant, have been allowed pets. Although the parties agree that the previous landlord granted verbal authorization exempting the Tenant from the “no pets” rule, the parties dispute the nature of this exemption, with the current Landlord arguing that the Tenant is permitted only one caged bird, and the Tenant arguing that they are permitted all of their current pets, which include 6 birds, one rabbit and one gecko. Further to this, I am not satisfied that the original landlord considered the pet exemption a material term of the tenancy agreement at the time it was granted, as they did not find it necessary or important to document, in writing, the nature of the pet exemption granted to the Tenant and there is no evidence before me

that the Tenant was aware at the time that the pet exemption was granted, that it was a material term of the tenancy agreement or what that meant.

Based on the above I am therefore not satisfied by the Agents that a material term of the tenancy agreement exists restricting or setting conditions on the number and type of pets the Tenant is entitled to have in the rental unit. In any event, even if I had been satisfied that such a material term exists, which I am not, based on the documentary evidence and testimony before me, I find that the Landlord and the Landlord's agents either failed to properly and regularly inspect the rental unit for the presence of pets, or regularly inspected the rental but failed to take notice or issue with the number and types of pets present over a period of many years. As a result of the above, I therefore find that it would be unreasonable for them to attempt to enforce any such material term of the agreement, should it have existed, as the Tenant would clearly have been in significant breach of it for many years, without any action on the part of the former or current Landlords. As a result, I find that the Landlord does not have grounds to end the tenancy on the basis that the type and number of pets present in the rental unit constitutes a breach of a material term of the tenancy agreement. Having made these findings, I will now turn my mind to whether the Tenant has put the Landlords property at significant risk.

The Agents for the Landlord argued that the number of pets in the rental unit constitutes a health and safety hazard, given the small size of the rental unit and the age of the building. The Tenant disagreed. None of the documentary evidence or testimony before me for consideration is sufficient to satisfy me that any health or safety hazard exists as a result of these pets, and as a result, I am not satisfied that one exists. Although the Agents also argued that the Tenant has overloaded the deck, they submitted no documentary evidence of this and the Tenant disagreed. As a result, I am also not satisfied that this is the case.

Although the Agents submitted documentary evidence that open food and pet food containers and edible plants are rodent attractants, they submitted no documentary evidence that the Tenant has open food, open pet food, or edible plants that would attract rodents in the rental unit and the Tenant stated that they do not. As a result, I am not satisfied that the Tenants possession or the manner in which they keep them is likely to attract rodents to the rental unit.

Finally, although the Agents argued that the Tenant's pets pose a significant risk to the property, the Tenant disagreed. The Tenant submitted several photographs of the rental unit in the area where the pet cages are kept, as evidence that no damage has occurred

from their pets in the numerous years that they have had their pets in the rental unit and argued that no significant damage will occur. Although the Agents pointed to a deficiency list regarding blinds allegedly damaged by a quilt hung over them for the sake of the Tenant's birds, this damage appears to have occurred several years ago. Further to this, I do not find that one relatively minor incident over the course of a 10 year tenancy during which the Tenant has had pets the majority of the time, gives rise to a general risk to the property from the Tenant's possession of their pets, let alone a significant risk as alleged by the Landlord and the Agents; especially given that the Landlord took no action to end the tenancy for this reason at the time this damage occurred.

Although the Agents raised an issue regarding smell, this issue is not listed as a ground for ending the tenancy on the One Month Notice and therefore I have not considered it here.

Based on the above, the Landlord and their Agents have failed to satisfy me that the Tenant has either breached a material term of the tenancy agreement or put the Landlord's property at significant risk and I therefore order that the One Month Notice is cancelled and of no force or effect.

Despite the findings above, I caution the Tenant that their possession of pets may still constitute grounds to end the tenancy pursuant to section 47 or 56 of the *Act*, now or in the future, if their presence in the rental unit gives rise to other valid reasons to end the tenancy under either of those sections. Further to this, the Tenant should be aware that my finding above that there is no *material* term of the tenancy agreement restricting or setting conditions on the number and type of pets they are permitted to have in the rental unit is not the same as a finding that there are no terms at all of the tenancy agreement to that affect and that the Landlord remains at liberty to seek an order from the Branch, should they wish to do so, enforcing any such term, should it be found to exist.

As the Tenant was successful in their Application, I grant them authority to withhold $100.00 from the next months rent payable under the tenancy agreement for recovery of the filing fee pursuant to section 72 of the Act.

Conclusion

I order that the One Month Notice is cancelled and that the tenancy therefore continue in full force and effect until it is ended by one of the parties in accordance with the Act.

Pursuant to section 72 of the Act, I grant the Tenant authority to withhold $100.00 from the next months rent payable under the tenancy agreement for recovery of the filing fee.

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: August 26, 2020

Residential Tenancy Branch