



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **CNC, LRE**

Introduction

This hearing dealt with an application by the tenant under the *Residential Tenancy Act* (the *Act*) for the following:

- Cancellation of One Month Notice to End Tenancy for Cause (“One Month Notice”) pursuant to section 47;
- An order to restrict or suspend the landlord’s right of entry pursuant to section 70.

The parties attended were given a full opportunity to be heard, to present affirmed testimony, make submissions, and call witnesses. I explained the hearing process and provided the parties with an opportunity to ask questions. The parties did not raise any issues regarding the service of evidence. I find the tenant served the landlord in compliance with the *Act*.

I have only considered and referenced in the Decision relevant evidence submitted in compliance with the Rules of Procedure to which I was referred.

Preliminary Issue

I informed the parties that in the event I dismissed the tenant’s application to cancel the Notice and found that it was issued in compliance with the *Act*, I was required under section 55 of the *Act* to grant an order of possession in favour of the landlord. Section 55 states as follows:

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

(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.

Issue(s) to be Decided

Is the tenant entitled to:

- Cancellation of One Month Notice to End Tenancy for Cause (“One Month Notice”) pursuant to section 47;
- An order to restrict or suspend the landlord’s right of entry pursuant to section 70.

Background and Evidence

The parties agreed as follows. The tenancy began on July 15, 2015 for monthly rent which is currently \$2,700.00 payable on the first of the month. The tenant provided a security deposit of \$1,150.00 which the landlord holds. The landlord submitted a copy of the signed 1-page tenancy agreement which stated that the tenant is not permitted to have a dog.

The tenant testified that the unit is a house and garage which she occupies with her husband and three children. In May 2019, the family acquired a dog; the tenant submitted documentary evidence of the purchase of the pet.

The tenant testified that the landlord has been aware that the family had a dog since May 2019 and did not object until a year later. She said the dog lived outside and it would not be possible for someone, such as the landlord, to visit the unit without noticing the dog. The tenant stated that the landlord has been to the unit many times and in the exchange of texts between the parties, the landlord has asked the tenant to make sure the dog is tied up when he comes.

The tenant speculated that the real reason for the objection to the continuation of the tenancy is that the tenant fell behind in payment of rent during the pandemic in early 2020.

The landlord disagreed with the tenant's version of events and testified he learned of the dog in June 2020. He promptly gave a verbal warning, ignored by the tenant, that the tenant was in noncompliance with the tenancy agreement. The tenant still has the dog.

The parties agreed the landlord issued a One Month Notice to End Tenancy for Cause based on breach of a material term. A copy was submitted in evidence. The tenant acknowledged service on June 30, 2020. The effective date was July 31, 2020.

The sole ground for the issuance of the Notice is that the landlord claimed that the tenant breached a material term of the tenancy when she acquired a dog. As stated, the tenant claimed in reply that the landlord knew the family got a dog over a year ago and did not object until June 2020.

With respect to the issue of the landlord's entry into the unit, each party accused the other of noncooperation in arranging routine inspections by the landlord.

The tenant testified that the landlord comes "all the time without notice", looking in the windows and upsetting the tenant. The problem became acute during the pandemic when the landlord would show up without notice demanding outstanding rent. The tenant said she told the landlord that if he showed up again, she was going to call the police.

The landlord denied the tenant's version of events. The landlord testified that he has repairs and inspections to do in the routine management of the unit and only recently (during the pandemic) the tenant started refusing to cooperate. For example, the landlord testified that his insurer required him to conduct an internal inspection of the unit. The tenant refused to cooperate with setting a time. The landlord attended at the unit with a police escort in order to gain access to the unit.

The landlord requested an order of possession.

The tenant requested that the One Month Notice be cancelled.

Analysis

I have considered all the submissions and evidence presented to me, including those provided in writing and orally. I will only refer to certain aspects of the submissions and evidence in my findings.

Section 47(1)(d) of the *Act* 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:*

...

(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,...

The landlord claimed that the tenant breached a material term of the tenancy agreement by getting a dog. The landlord claimed he gave verbal notice to the tenant warning her to get rid of the dog as soon as he learned she had one in June 2020. However, the tenant testified the landlord knew the family acquired a dog a year ago, never warned the tenant, and has lost the right to complain by remaining silent about the dog for a year.

The parties agreed that the landlord has been to the unit many times in the year since the dog came to live with the tenant. I find it unlikely the landlord did not notice the dog until June 2020 as he claimed. I accept the tenant's testimony as being the most likely version of events and find that the dog was obvious to a visitor to the unit and visible whenever the landlord came.

No documentary evidence of written warnings was submitted.

I find that the legal principle of estoppel applies to this situation of the landlord's claim that he objected to the pet as soon as he learned the tenant had a pet. and that the pet-prohibition in the agreement was a material term that was breached by the tenant.

Estoppel is a legal doctrine which holds that one party may be prevented from strictly enforcing a legal right to the detriment of the other party, if the first party has established a pattern of failing to enforce this right, and the second party has relied on this conduct and has acted accordingly. To return to a strict enforcement of their right, the first party must give the second party notice (in writing) that they are changing their conduct and are not going to strictly enforce the right previously waived or not enforced.

I find the parties established the tenant could have a pet as the landlord did not object within a reasonable and timely manner. I find the landlord accepted the situation for

over a year and I accept the tenant's testimony that the landlord would ask the tenant before he visited to leash the dog. I find the landlord cannot now object to the dog retroactively.

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In consideration of the evidence and testimony, I find that the landlord has failed to meet the standard of proof on a balance of probabilities that he objected to the tenant having a dog in a timely manner or that the tenant breached a material term of the tenancy by having a dog. I therefore find that the landlord cannot now complain about the dog and assert that having the dog is a breach of a material term.

In conclusion, I find that the landlord has failed to establish cause for ending this tenancy.

Accordingly, I cancel the One Month Notice. The tenancy will continue until it is ended in accordance with the agreement and the Act.

With respect to the tenant's application to restrict the landlord's right of entry, I refer to section 70 of the Act which states:

70 (1) *The director, by order, may suspend or set conditions on a landlord's right to enter a rental unit under section 29 [landlord's right to enter rental unit restricted]*

(2) *If satisfied that a landlord is likely to enter a rental unit other than as authorized under section 29, the director, by order, may*

(a) authorize the tenant to change the locks, keys or other means that allow access to the rental unit, and

(b) prohibit the landlord from replacing those locks or obtaining keys or by other means obtaining entry into the rental unit.

In assessing the credibility of the parties, I find the landlord's version of events to be the most likely. Where the testimony of the parties' conflict with respect to the access/entry issue, I give greater weight to the landlord's version of events.

The tenant acknowledged that the police accompanied the landlord to gain lawful access to the unit on July 31, 2020. I find that such an event is most likely to have occurred because the tenant denied the landlord access as required under the Act.

Based on the conflicting version of events, I find the tenant has failed to meet the burden of proof on a balance of probabilities for an order under this section. The tenant's application under this section is dismissed without leave to reapply.

Conclusion

The One Month Notice is cancelled. The tenancy shall continue until ended in accordance with the agreement and the Act.

The tenant's application for an order under section 70 is dismissed without leave to reapply.

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 10, 2020

Residential Tenancy Branch