



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the "Act") for an order to cancel a One Month Notice To End Tenancy for Cause pursuant to sections 47 and 55.

The tenant attended the hearing and was accompanied by her counsel, PV. The landlords did not attend the hearing, but were represented by an agent, MD ("landlord"). Neither party raised concerns with timely service of documents, and both were prepared to have the merits of the tenant's application heard.

Preliminary Matters

Section 63 of the *Act* allows an Arbitrator to assist the parties settle their dispute and record the settlement in the form of a decision and order if the parties settle their dispute during the dispute resolution proceeding. Accordingly, I attempted to assist the parties to resolve this dispute by helping them negotiate terms of a settlement. The parties could not reach consensus on the terms of a settlement; therefore, I heard testimony, considered the evidence, and issued a decision to resolve this dispute.

Issue(s) to be Decided

Should the One Month Notice To End Tenancy for Cause be upheld or cancelled?

Background and Evidence

The hearing process was explained, and parties were given an opportunity to ask any questions about the process. The parties were given a full opportunity to present affirmed testimony, make submissions, and to question the other party on the relevant evidence provided in this hearing. While I have turned my mind to all the documentary evidence and testimony, not all details of the parties' respective submissions and/or

arguments are reproduced here. The principal aspects of each of the parties' respective positions have been recorded and will be addressed in this decision.

The landlord gave a brief outline of his reasons for ending the tenancy. He stated that the tenant has breached a material term of the tenancy by owning more than 3 dogs when the tenancy agreement only allowed for a maximum of 3. He also surmises that the tenant is running a business of dog breeding out of the rental unit.

The landlord's witness, SK was called first. She testified that she was visiting the landlords on September 3, 2020 and saw four small white dogs exit the tenant's rental unit, one at a time when the tenant opened the door. She was approximately 15 feet away from the tenant's door when she saw this and she does not know who owns which dogs. She is a friend of the landlords and she helps to take care of them. They told her about the issues they were having with the tenant regarding having more than 3 dogs.

The landlord provided the following testimony. The rental unit is a small cottage located on the landlord's property. The parties signed a tenancy agreement, provided as evidence by the landlord.

On the tenancy agreement, there is a clause that states:

*PETS: Owner has approved a few (3) little dogs. Dogs are taken to work with the tenant. Are permitted in the premises. A pet deposit of ½ month's rent is due within 30 days of the pets residing in the home/unit. Failure to pay the pet deposit within 30 days will result in [realty company] serving notice to remove the animal and filing for an order of possession if said animal is not removed within the timeframe given. ..
The tenant is also responsible for any extra costs incurred to remove the unauthorized pet.*

During the tenancy, the landlord noticed multiple vehicles attend the tenant's rental unit which the landlord suspects are clients looking to purchase dogs from the tenant. The owners of the property sent the tenant an email dated August 4, 2020 whereby they note the number of dogs has increased; the tenant appears to be running a dog breeding business; and that the tenant has made electrical changes to the unit. The email concludes that the landlords can no longer deal with the upset the rental cottage has created and asked the tenant to relocate in 3 months.

On August 16, 2020, the landlord's agent personally served the tenant with a One Month Notice to End Tenancy for Cause which the tenant acknowledges receiving that

day. The effective date is September 30, 2020 and the reasons for ending the tenancy states:

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

Together with the notice, the landlord's agent provided a letter that states:

If you have not reduced the number of dogs down to 3 as of August 31, 2020 then the included 30-day notice of eviction is in effect.

The landlord's agent testified that he emailed the tenant advising her that she was given a reasonable timeframe to comply and if she doesn't, then '*unfortunately the notice is in effect*'. On August 31st, the tenant responded, advising the agent that she has retained counsel and that as of that date there are 3 dogs only at her residence. The landlord submits that the testimony of the witness who saw 4 dogs on September 3rd is sufficient proof that the tenant continues to breach the material term of the tenancy. It is the landlord's belief that providing the tenant with a notice to comply with a material term of the tenancy simultaneous to the One Month Notice to End Tenancy for Cause is sufficient because the notice isn't effective until the future date stated on the notice.

The tenant provided the following testimony. She was never provided with any previous written warnings regarding the material term of the tenancy. She acknowledges receipt of the August 16th email from the property owner and she found alternate accommodations effective November 1, 2020 in compliance with the owner's request. The tenant testified that at no time was she ever given a timeline to comply with the terms of the tenancy agreement before being served the One Month Notice to End Tenancy for Cause. The only timeline provided was the one attached to the notice, advising her that she had until August 31st to comply or else the '*notice would be in effect*'. The tenant gave one of her dogs to friends, H and L to look after until she moves out on November 1st. On September 3rd, the day the landlord's witness saw the 4 dogs, she had an overnight guest over who owned the same breed of dog.

The tenant testified that she didn't receive any notice to end tenancy from the landlord anytime after August 31st. The tenant's counsel submits that the One Month Notice to End Tenancy for Cause served on August 16th is illegitimate because it doesn't provide the tenant with time to comply with the written notice to remove the dogs before being served with the One Month Notice to End Tenancy for Cause.

Analysis

I am satisfied the tenant was served with the One Month Notice To End Tenancy for Cause on August 16th, 2020 in accordance with sections 88 and 90 of the Act. She applied to dispute it on August 25th, nine days later.

Section 47 of the Act provides that upon receipt of a Notice to End Tenancy for Cause, the tenant may, within ten days, dispute it by filing an application for dispute resolution with the Residential Tenancy Branch. If the tenant files the application, the landlord bears the burden to prove on a balance of probabilities, the grounds for the 1 Month Notice.

The landlord must show on a balance of probabilities, which is to say it is more likely than not, that the tenancy should be ended for the reasons identified in the 1 Month Notice. In the matter at hand the landlord must demonstrate that the tenant breached of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.

Residential Tenancy Branch Policy Guideline PG-8 [Unconscionable and Material Terms] provides guidance to landlords and tenants regarding material terms of a tenancy. It 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 end a tenancy agreement for breach of a material term the party alleging a breach – whether landlord or tenant – must inform the other party in writing:

- *that there is a problem;*
- *that they believe the problem is a breach of a material term of the tenancy agreement;*
- *that the problem must be fixed by a deadline included in the letter, and that the deadline be reasonable; and*
- *that if the problem is not fixed by the deadline, the party will end the tenancy.*

Where a party gives written notice ending a tenancy agreement on the basis that the other has breached a material term of the tenancy agreement, and a dispute arises as a result of this action, the party alleging the breach bears the burden of proof. A party might not be found in breach of a material term if unaware of the problem.

In this case, the landlord provided a letter advising the tenant of the pet term of the tenancy agreement considered to be a material term and provided a reasonable deadline for the problem to be fixed. However, supplying the letter simultaneous to serving the notice to end tenancy is not compliant with section 47 of the Act. Before serving a One Month Notice To End Tenancy for Cause, the landlord must provide the tenant with the opportunity to correct the situation. The landlord's reasoning that the notice served on August 16th '*does not take effect*' if the tenant complies with the landlord's letter is not in accordance with the Act. As PG-8 states, that the problem must be fixed by a deadline included in the letter; the deadline be reasonable; and that if the problem is not fixed by the deadline, the party will end the tenancy.

In order for the notice to be compliant with section 47 of the Act, the landlord must first advise the tenant what needs to be fixed within a reasonable period and if the problem is not corrected, the landlord will then serve a notice to end tenancy. The landlord cannot seek compliance and serve notice simultaneously. I find that the landlord did not provide sufficient notice that the tenant was breaching a material term of the tenancy and for that reason, the notice to end tenancy is cancelled and of no further force or effect. This tenancy shall continue until ended in accordance with the Act.

Conclusion

The landlord's One Month Notice to End Tenancy for Cause is cancelled and of no further force or effect. The tenancy will continue until ended in accordance with the Act.

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: September 29, 2020

Residential Tenancy Branch