



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding SANFORD HOUSING SOCIETY
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPC, FFL

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* ("Act") for:

- an order of possession for cause, pursuant to section 55; and
- authorization to recover the filing fee for this application, pursuant to section 72.

The landlord's agent ("landlord") and the tenant attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. This hearing lasted approximately 37 minutes.

The landlord confirmed that he was the property manager for the landlord company named in this application and that he had permission to speak on its behalf at this hearing.

The tenant confirmed receipt of the landlord's application for dispute resolution hearing package. In accordance with sections 89 and 90 of the *Act*, I find that the tenant was duly served with the landlord's application.

The tenant confirmed that he did not submit any evidence for this hearing.

The tenant confirmed personal receipt of the landlord's One Month Notice to End Tenancy for Cause, dated June 30, 2020 ("1 Month Notice") on the same date. The landlord confirmed service on the above date using the above method. In accordance with section 88 of the *Act*, I find that the tenant was duly served with the landlord's 1 Month Notice on June 30, 2020.

Issues to be Decided

Is the landlord entitled to an order of possession for cause based on the 1 Month Notice?

Is the landlord entitled to recover the filing fee for this application from the tenant?

Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of both parties, not all details of the respective submissions and arguments are reproduced here. The relevant and important aspects of the landlord's claims and my findings are set out below.

Both parties agreed to the following facts. This tenancy began on November 1, 2013. Monthly rent in the current amount of \$1,365.00 is payable on the first day of each month. A security deposit of \$300.00 was paid by the tenant and the landlord continues to retain this deposit. A written tenancy agreement was signed by both parties. The tenant continues to reside in the rental unit.

A copy of the 1 Month Notice was provided. Both parties agreed that the effective move-out date on the notice is July 31, 2020. Both parties agreed that the landlord cited the following reason for the issuance of the notice:

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

The landlord testified regarding the following facts. The tenant has an unregistered dog, that is not spayed or neutered, at the rental unit. The tenant has not paid a pet damage deposit to the landlord. There have been multiple reports of attacks from the tenant's dog made by the landlord's staff and other occupants in the rental building. The tenant's dog has lunged at other people and the tenant has no control of his dog. On June 17, 2020, there were two reports about the tenant's dog lunging and trying to bite another occupant and the dog biting an occupant's bike tire. On June 25, 2020, the tenant's dog lunged and grabbed the arm of a man for 20 seconds. On February 23, 2020, the tenant's dog bit the upper right thigh of the landlord's staff member. On March 31, 2020, the tenant's dog attacked another occupant in the rental building, but that occupant was not harmed as the dog bit into the sleeve of that person. On September 25, 2020, the landlord submitted video of the tenant with his dog involved in

another incident, which the tenant denies is his dog. It is the landlord's responsibility to keep the other occupants in the rental building safe, the tenant's dog is aggressive towards support workers, staff and other occupants, and the dog is not safe in the rental building.

The tenant testified regarding the following facts. The tenant was present when his dog bit the bike tire. On March 31, 2020, the occupant had an asthma attack and hated dogs but then pet the tenant's dog and likes him now. That occupant wanted his jacket replaced. The same female tenant has been writing complaint emails to the landlord and was upset that the landlord was using them against the tenant. The landlord's staff member would not show the tenant his thigh bite from the dog, did not submit a hospital report, his name is not on the landlord's document, and that member is gone now. The tenant has abided by animal control rules and put a muzzle on his dog. The tenant's dog has improved after he got it, from August to September 2020 there have been changes, and 9 people have signed a document stating that there have been positive changes with the tenant's dog.

Analysis

On a balance of probabilities and for the reasons stated below, I find that the landlord failed to show that it issued the 1 Month Notice for a valid reason, as required by section 47 of the Act.

A material term is defined in Residential Tenancy Policy Guideline 8 (my emphasis added):

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 determine the materiality of a term during a dispute resolution hearing, the Residential Tenancy Branch will focus upon the importance of the term in the overall scheme of the tenancy agreement, as opposed to the consequences of the breach. **It falls to the person relying on the term to present evidence and argument supporting the proposition that the term was a material term.***

*The question of whether or not a term is material is determined by the facts and circumstances surrounding the creation of the tenancy agreement in question. It is possible that the **same term may be material in one agreement and not material in another.** **Simply because the parties have put in the agreement***

that one or more terms are material is not decisive. During a dispute resolution proceeding, the Residential Tenancy Branch will look at the **true intention of the parties in determining whether or not the clause is material.**

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.

The landlord did not indicate which section of the tenancy agreement the tenant breached, how it was a material term, and why it was a material term. The landlord did not indicate what deadline was given to the tenant, whether it was a reasonable deadline, and that the tenant breached that deadline. These elements are required to be proven by the landlord at the hearing, as the 1 Month Notice was issued for the above reason by the landlord.

The landlord was given ample time during the hearing to present his case and was told that he could present his case however he chose to do so. The landlord did not point me to any specific sections or documents during the hearing, he simply announced dates of complaints and details of events, as noted above.

For the reasons stated above, I find that the landlord did not provide sufficient evidence to demonstrate that the tenant failed to comply with a material term and has not corrected the situation within a reasonable time after the landlord gave written notice to do so.

Accordingly, the landlord's application for an order of possession for cause is dismissed without leave to reapply. The landlord's 1 Month Notice, dated June 30, 2020, is cancelled and of no force or effect. This tenancy continues until it is ended in accordance with the *Act*.

As the landlord was unsuccessful in this application, I find that the landlord is not entitled to recover the \$100.00 filing fee from the tenant.

Conclusion

The landlord's entire application is dismissed without leave to reapply.

The landlord's 1 Month Notice, dated June 30, 2020, is cancelled and of no force or effect.

This tenancy continues until it is 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: October 05, 2020

Residential Tenancy Branch