Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, LAT, LRE, OLC, FFT

Introduction

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

- cancellation of the landlord's 1 Month Notice to End Tenancy for Cause (the 1 Month Notice) pursuant to section 47;
- authorization to change the locks to the rental unit pursuant to section 70;
- an order requiring the landlord to comply with the Act, regulation or tenancy agreement pursuant to section 62;
- an order to suspend or set conditions on the landlord's right to enter the rental unit pursuant to section 70;
- authorization to recover her filing fee for this application from the landlord pursuant to section 72.

The tenant and the landlord's agent, F.L. attended the hearing via conference call and provided affirmed testimony.

Both parties were advised that the conference call hearing was scheduled for 60 minutes and pursuant to the Rules of Procedure, Rule 6.11 Recordings Prohibited that recording of this call is prohibited.

At the outset, the landlord's agent, F.L. confirmed that he was not the landlord but an agent. Discussions with both parties confirmed this information. Both parties consented to the tenant's application being amended to reflect the name of the actual landlord and not the landlord's agent. As such, the tenant's application shall be amended to reflect the landlord, H.B. (as listed on the cover of this decision) and not F.L. the agent.

Both parties confirmed the tenant served the landlord with the notice of hearing package in person on February 9, 2021. Extensive discussions took place regarding the service of evidence. The tenant submitted 19 documentary evidence files to the Residential Tenancy Branch. The tenant served only a 3 page excerpt of text messages to the landlord. The landlord confirmed receipt of the 3 pages of text messages. The tenant confirmed that she did not provide a copy of any other evidence to the landlord. The landlord confirmed no other evidence received from the tenant. Pursuant to section 90 of the Act, I find that the landlord was not properly served with the tenant's documentary evidence save and except for the 3 page excerpt of text messages. On this basis, the tenant's remaining documentary evidence submissions are excluded from consideration in this dispute. Both parties confirmed the landlord served the tenant with his submitted documentary evidence via email. Neither party raised any service issues. On this basis, both parties are deemed served with the notice of hearing package as per section 90 of the Act.

Discussions during the hearing resulted in the tenant's requests for: authorization to change the locks; to suspend or set conditions on the landlord's right to enter; and an order for the landlord to comply were clarified. The tenant stated that no unauthorized entry has taken place by the landlord, but that the tenant fears that it might take place. The tenant also stated that she did not receive a warning letter prior to the issuance of a 1 month notice to end tenancy for cause. On all these issues, the tenant's primary concern was that the landlord provide proper notice for entry as per section 29 of the Act. The landlord stated that he has no reason for entry and always issues a notice as per the Act. As such, no further action is required. Both parties were cautioned that entry by a landlord into a tenant's rental unit is governed by Section 29 of the Act and both parties were reminded of those provisions.

Issue(s) to be Decided

Is the tenant entitled to an order cancelling the 1 month notice?

Background and Evidence

While I have turned my mind to all the documentary evidence, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of the applicant's claim and my findings are set out below.

The landlord served the tenant with the 1 Month Notice dated February 1, 2021. The 1 Month Notice sets out an effective end of tenancy date of February 28, 2021 and that it was being given as:

- the tenant has engaged in illegal activity that has, or is likely to:
    - adversely affect the quite enjoyment, security, safety or physical well-being of another occupant or the landlord.
- Breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.

The details of cause states:

As per page 3 of lease agreement para 4 B no pet in suite.
Landlord never agree with pet.
Please remove dog asap.
[reproduced as written]

The landlord stated that the notice was placed in the mailbox on February 1, 2021, but the tenant stated that the notice was placed in the mailbox on February 2, 2021.

The effective end of tenancy date was also discussed and section 53 of the Act was also explained that incorrect effective dates are automatically changed. As such, the effective end of tenancy date is corrected to March 31, 2021.

The landlord provided affirmed testimony that the tenant has a pet contrary to the signed tenancy agreement as the reason for:

- the tenant has engaged in illegal activity that has, or is likely to:
    - adversely affect the quite enjoyment, security, safety or physical well-being of another occupant or the landlord.

The landlord was unable to provide any relevant evidence in that having a pet was an illegal activity. The landlord was unable to provide any evidence that having a pet was contrary to any municipal, provincial or federal statute in British Columbia.

The landlord provided affirmed testimony that the tenant has a no pet condition of the rental agreement. The landlord referred to two documents: a tenancy application form in which the tenant stated that she did not have a pet and the signed tenancy agreement, specifically page 3, section 4 in which no pet damage deposit was required by the landlord.

The tenant stated at the end of the hearing that she had received a verbal authorization to have a pet from the landlord.

Analysis

In an application to cancel a 1 Month Notice, the landlord has the onus of proving on a balance of probabilities that at least one of the reasons set out in the notice is met.

I accept the affirmed evidence of both parties and find that the landlord did serve the 1 month notice dated February 1, 2021 on either February 1, 2021 or February 2, 2021 by placing it in the tenant's mailbox. In this case, pursuant to section 90 of the Act, the tenant is deemed to have been served 3 days later on February 5, 2021. I make this finding based upon the tenant's receipt date. No other evidence was provided by either party regarding service.

I find on a balance of probabilities that the landlord has failed to provide sufficient evidence to establish his claims for cause. On the first reason for cause under illegal activity the landlord has stated that having a pet was considered by the landlord to be illegal activity.

Residential Tenancy Branch, Policy Guideline #32, Illegal Activities states in part,

The Meaning of Illegal Activity and What Would Constitute an Illegal Activity

The term "illegal activity" would include a serious violation of federal, provincial or municipal law, whether or not it is an offense under the Criminal Code. It may include an act prohibited by any statute or bylaw which is serious enough to have a harmful impact on the landlord, the landlord's property, or other occupants of the residential property.

In this case, I find that the landlord has failed to provide sufficient evidence of an illegal activity. The landlord's claim that having a pet falls within this reason for cause is dismissed.

I also find on a balance of probabilities that the landlord has failed to provide sufficient evidence to establish his claims for cause on the second reason for cause under breach of a material term of the tenancy which was not corrected after written notice to do so.

In this case, the tenant has argued that no written warning was given to the tenant prior to the issuance of the 1 month notice.

The landlord provided undisputed affirmed testimony that there is a no "no pet" clause in the signed tenancy agreement and referred to page 3, section 4 which refers to "not

applicable" in which no pet damage deposit was taken. The landlord stated that as no pet damage deposit was taken there is a "no pet clause". The landlord also stated in the application for dispute completed by the tenant, the tenant was asked if she had a pet. The answer was "no". the landlord argued that by answering "no" the landlord assumed the tenant did not have a pet. The landlord also stated by assuming these things the tenant should know that there was no pets allowed.

The landlord's arguments that the tenant by answering the application for dispute that she did not have a pet meant that no pets were allowed by the landlord. The landlord was notified that answering questions to an application for dispute is not the same as a clause imposed by the landlord for "no pets allowed" in a signed tenancy agreement. The landlord confirmed that no such clause was added to the Residential Tenancy Branch #RTB-1 form completed by both parties. No additions or addendums were added. The landlord failed to provide sufficient evidence that there was a no pet clause and that it was a material term of the tenancy. The 1 month notice dated February 1, 2021 is set aside and cancelled. The tenancy shall continue.

The tenant having been successful is entitled to recovery of the $100.00 filing fee. As the tenancy continues the tenant is authorized to withhold one-time, $100.00 from the next monthly rent upon receipt of this decision in satisfaction of this claim.

Conclusion

The tenant's application is granted.

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: May 03, 2021

Residential Tenancy Branch