



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC

Introduction

This hearing convened as a result of a Tenant's Application for Dispute Resolution, filed on September 27, 2022 in which the Tenant sought to cancel a 1 Month Notice to End Tenancy for Cause issued on September 23, 2022 (the "Notice")

The hearing was conducted by teleconference at 11:00 a.m. on December 5, 2022. Both parties called into the hearing and were provided the opportunity to present their evidence orally and in written and documentary form and to make submissions to me. The Tenant was also assisted by an Advocate, T.L.

The parties were cautioned that private recordings of the hearing were not permitted pursuant to *Rule 6.11* of the *Residential Tenancy Branch Rules*. Both parties confirmed their understanding of this requirement and further confirmed they were not making recordings of the hearing.

The parties agreed that all evidence that each party provided had been exchanged. No issues with respect to service or delivery of documents or evidence were raised. I have reviewed all oral and written evidence before me that met the requirements of the *Residential Tenancy Branch Rules of Procedure*. However, not all details of the parties' respective submissions and or arguments are reproduced here; further, only the evidence specifically referenced by the parties and relevant to the issues and findings in this matter are described in this Decision.

Preliminary Matter—Date and Delivery of Decision

The hearing of the Tenant's Application concluded on December 5, 2022. This Decision was rendered on January 11, 2023. Although section 77(1)(d) of the *Residential Tenancy Act* provides that decisions must be given within 30 days after the proceedings, conclude, 77(2) provides that the director does not lose authority in a dispute resolution proceeding, nor is the validity of the decision affected, if a decision is given after the 30-day period.

Issue to be Decided

Should the Notice be cancelled?

Background and Evidence

Residential Tenancy Branch Rules of Procedure—Rule 6.6 provides that when a tenant applies to cancel a notice to end tenancy the landlord must present their evidence first as it is the landlord who bears the burden of proving (on a balance of probabilities) the reasons for ending the tenancy. Consequently, even though the Tenant applied for dispute resolution and is the Applicant, the Landlord presented their evidence first.

The Landlord testified as follows. The tenancy began February 1, 2015. The Landlord stated that the unit is a walk out basement suite in a four plex. The Landlord confirmed that she owns the entire fourplex and that all the units are rented out. The Landlord further confirmed she has owned the unit for 18 years.

The Landlord sought to end the tenancy for a breach of a material term of the tenancy, specifically, that the Tenant had a pet contrary to the tenancy agreement. A copy of the tenancy agreement was provided in evidence, as well as a copy of the "Pet Agreement" which was attached to the tenancy agreement. Notably, the Tenant did not sign the Pet Agreement. The Pet Agreement provided that the Tenant was only permitted to have a cockatiel.

The Landlord provided a copy of a warning letter sent to the Tenant in January of 2018 reminding the Tenant she was not to have pets, save and except for a cockatiel.

In terms of the other occupants of the fourplex, the Landlord stated that one other tenant has a cat; she claimed that she had private reasons for why she allowed the other tenant to have a pet.

The Landlord stated that the first time she was aware the Tenant was dog sitting was in January of 2018. At that time the Landlord spoke to the Tenant and then the next day, on January 2, 2018, the Landlord sent the Tenant a warning letter.

The Landlord stated that to her knowledge the Tenant did not have a pet on the property from January 2018 to September 2022. The Landlord stated that on three separate occasions, September 2, 13 and 27, she was at the property and the Tenant had a small black dog. The Tenant stated that she was dog sitting and the dog was "just leaving".

The Landlord stated that after the January 2018 letter, she did not send the Tenant a further warning letter, nor did she advise the Tenant that her tenancy was in jeopardy, nor did she give the Tenant an opportunity to correct the situation. The Landlord stated that she and her husband were out of province and decided to just issue the Notice.

The Landlord also stated that she has not been able to attend the rental unit for medical reasons and is not aware if the Tenant currently has had a pet over at the property.

In response the Tenant testified as follows. The Tenant stated that she could not remember if she signed the Pet Agreement.

The Tenant confirmed that the little black dog is a friend of hers. She stated that in the fall of 2022 she was dog sitting for her friend who was "desperate". The Tenant stated that she did not know that she was prohibited from even having a dog visit, as she knew she was not allowed to have pets, but didn't know about the prohibition against having dogs on the premises at all, until September 26, 2022 when the Landlord gave her a copy of the tenancy agreement and Pet Agreement. The Tenant testified that since she received these documents from the Landlord she has not had a pet on the premises.

The Tenant stated that to her knowledge no one else has a pet in the fourplex. She stated that she understands that the Tenant who had a cat no longer has one.

The Tenant stated that she remembers receiving a letter from the Landlord in 2018, but she was upset and threw it away. She again stated that she didn't realize that she wasn't allowed to even have pets visit.

Analysis

Ending a tenancy is a significant request. A tenancy may only be ended in accordance with the *Act*. In this case the Landlord seeks to end the tenancy for cause, alleging the Tenant breached a material term of the tenancy, namely the no pet clause of her tenancy agreement. Section 47(1)(h) of the *Act* allows the Landlord to end a tenancy for a breach of a material term provided that the Landlord proves that the 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.

Arbitrators are also guided by the *Residential Tenancy Branch Policy Guidelines*. *Policy Guideline #8 Unconsonable and Material Terms* provides as follows:

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.

In this case I find the Landlord failed to comply with the above. While she warned the Tenant in 2018 as to the no pet clause, there was no evidence to show she did so in 2022. Further, there was no evidence to show that the Landlord informed the Tenant that she believed the Tenant having a pet over on occasion was a breach of a material term of her tenancy agreement or that her tenancy was in jeopardy. As well, there was no evidence to show that the Landlord gave the Tenant a reasonable opportunity to correct the situation.

I am not satisfied the Landlord has met the burden of proving that this tenancy should end for the reasons cited on the Notice.

I also accept the Tenant's evidence that she does not have a dog, but was only pet sitting on occasion. I also accept her evidence that when she received the tenancy agreement and Pet Agreement she no longer had the dog over at the rental unit.

Conclusion

I grant the Tenant's request to cancel the Notice. The tenancy shall 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: January 11, 2023

Residential Tenancy Branch