



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes **CNC,OPC**

Introduction

This hearing was convened by way of conference call in response to cross Applications for Dispute Resolution filed by the parties pursuant to the Residential Tenancy Act (the “Act”) for Orders as follows:

The tenant applied as follows:

- For cancellation of the landlord’s One Month Notice to End Tenancy for Cause (“One Month Notice”) pursuant to section 47 of the Act

The landlord applied as follows:

- For an order of possession pursuant to section 55 of the Act

Both parties attended the hearing with the landlords being represented by agents DL and IK. The tenant, MK appeared with advocates MA and CN. All parties were given a full opportunity to be heard, to present testimony, to make submissions, and to call witnesses.

The parties confirmed they were not recording the hearing pursuant to Rule of Procedure 6.11. The parties were affirmed.

The tenant confirmed receipt of the One Month Notice dated November 10, 2022 with an effective date of December 31, 2022. Pursuant to section 88 of the Act the tenant is found to have been served with the notice in accordance with the Act.

The parties each testified that they received the respective materials and based on their testimonies I find each party duly served in accordance with sections 88 and 89 of the Act.

Issue(s) to be Decided

1. Is the One Month Notice valid and enforceable against the tenant? If so, is the landlord entitled to an order of possession?

Background and Evidence

The tenancy commenced on June 1, 2021 on a month to month basis. Rent was \$550.00 per month due on the first of the month. The landlord holds a security deposit of \$400.00 in trust for the tenant. The tenant still occupies the rental unit.

The landlord testified that the One Month Notice was served for repeated pet violations. The landlord stated that paragraph 23 of the tenancy agreement, initialled by the tenant the date the agreement was signed, clearly states that there are no pets allowed. The tenancy agreement was produced in evidence.

The landlord produced photos in evidence taken on February 11, 2022 of a cat wandering the premises. The cat proceeded directly to the tenant's rental unit. On February 14, 2022 a cat was noted in the tenant's window. In a letter dated February 14, 2022 the landlord stated that they would be entering the tenant's rental unit on February 15, 2022. Upon speaking with the tenant, the tenant admitted to having cats but stated that she no longer has them.

In July 2022 the landlord received complaints that the tenant still had a cat. A letter was sent to the tenant on September 12, 2022 reminding the tenant that pets are not allowed, unless it is an emotional support animal and the landlord has no evidence that the cat is an emotional support animal. In that letter the landlord details that the tenant's son stated there were no pets in the tenant's unit and offered to show the landlord the rental unit. The landlord declined.

The landlord further testified that during a fire inspection on November 7, 2022 another cat was seen in the tenant's rental unit. A picture of the cat in the window of the tenant's residence was produced in evidence.

The tenant through her advocates stated that she does not own a cat. The tenant's son however does have a cat that he occasionally brought over to the tenant's rental unit to visit. That is the only cat that has been in the rental unit.

Analysis

RTB Rules of Procedure 6.6 states, "The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim. In most circumstances this is the person making the application. However, in some situations the arbitrator may determine the onus of proof is on the other party. For example, the landlord must prove the reason they wish to end the tenancy when the tenant apply to cancel a Notice to End Tenancy." In this case, the landlord has the burden of proving the validity of the One Month Notice served on the tenant.

The One Month Notice provided in evidence states the reason of ending the tenancy is that the tenant breached a material term of the tenancy agreement that was not corrected within a reasonable time after being given written notice to do so. The landlord provided the written notice warning the tenant that pets were a violation of the tenancy agreement.

The tenant initially admitted to having cats, but removed them from the rental unit in February, 2022. The only further evidence provided by the landlord of the tenant having a cat after that time were the pictures taken November 7, 2022 showing a cat in the tenant's rental unit.

While the basis of issuing the One Month Notice was that the tenant had a pet in contravention of the tenancy agreement, the landlord has not provided evidence establishing that this term of the tenancy agreement is a material term as required by section 47 of the Act. The landlord stated in evidence that the tenant could have a pet if she filled out the paperwork allowing her to keep a pet as an emotional support animal. Therefore, I find that having a pet without filling out the paperwork stating that the pet is an emotional support animal is a technical, rather than a material breach of a term of the tenancy agreement. Therefore the landlord has not established the requisite cause to end the tenancy.

The tenant's application is granted. The One Month Notice is not valid and enforceable. The One Month Notice is cancelled. The landlord's application for an order of possession is dismissed.

Conclusion

The tenant's application is granted. The tenancy shall continue 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: February 26, 2023

Residential Tenancy Branch