



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes CNC

Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution filed by the Tenants January 21, 2023 (the “Application”). The Tenants applied to dispute a One Month Notice to End Tenancy for Cause dated January 19, 2023 (the “Notice”).

The Tenant and Landlord appeared at the hearing. I explained the hearing process to the parties. I told the parties they are not allowed to record the hearing pursuant to the Rules of Procedure (the “Rules”). The parties provided affirmed testimony.

Both parties submitted evidence prior to the hearing. I addressed service of the hearing package and evidence.

The Landlord confirmed receipt of the hearing package and Tenants’ evidence and confirmed there were no service issues.

The Tenant testified that they have not received the Landlord’s evidence. The Landlord testified that their evidence was sent to the Tenants by email the day before the hearing. The Tenant did not take issue with admissibility of the tenancy agreement. The Tenant submitted the Notice. None of the remaining evidence is relevant to this Decision and therefore I have not gone into this issue further.

The parties were given an opportunity to present relevant evidence and make relevant submissions. I have considered the Notice and tenancy agreement as well as all testimony provided. I will only refer to the evidence I find relevant in this decision.

Issues to be Decided

1. Should the Notice be cancelled?
2. If the Notice is not cancelled, should the Landlord be issued an Order of Possession?

Background and Evidence

A written tenancy agreement was submitted. The agreement names the owner as landlord. The Landlord is an agent for the owner.

The Landlord testified that the Notice was sent to the Tenants by registered mail January 19, 2023, and by email the same date. The Tenant testified that they received the Notice by email January 19, 2023.

The ground for the Notice is breach of a material term of the tenancy agreement.

The Landlord testified that the Tenants have a pet which is not allowed. The Landlord also testified that the Tenants have not paid a pet damage deposit as required. The Landlord said there is no term in the tenancy agreement prohibiting pets. The Landlord also said there is no term in the tenancy agreement requiring a pet damage deposit upon the Tenants getting a pet.

Analysis

The Notice was issued pursuant to section 47(1)(h) of the *Residential Tenancy Act* (the “Act”) which states:

47 (1) A landlord may end a tenancy by giving notice to end the tenancy if one or more of the following applies...

(h) the tenant

(i) has failed to comply with a **material term**, and

(ii) has not corrected the situation within a reasonable time after the landlord gives written notice to do so...

The Tenants had 10 days from receiving the Notice to dispute it under section 47(4) of the *Act*. I accept that the Tenant received the Notice by email January 19, 2023. The Application was filed January 21, 2023, within time.

The Landlord has the onus to prove the grounds for the Notice pursuant to rule 6.6 of the Rules.

RTB Policy Guideline 8 deals with material terms in a tenancy agreement and states:

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...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...

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 notice to end tenancy issued under section 47(1)(h) of the *Act* can only be issued where a tenant has breached a material term of the tenancy agreement. Here, the Landlord could not point to a term of the tenancy agreement that was breached, let alone a material term. The Landlord was not permitted to issue the Notice in the absence of there being a term in the tenancy agreement that the Tenants were breaching. The Landlord did not have grounds to issue the Notice and the Notice is cancelled. The tenancy will continue until ended in accordance with the *Act*.

Conclusion

The Application is granted. The Notice is cancelled. 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 *Act*.

Dated: March 13, 2023

Residential Tenancy Branch