



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes CNR, CNE, LRE, FFT

Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution filed by the Tenants January 20, 2023 (the “Application”). The Tenants applied as follows:

- To dispute a 10 Day Notice to End Tenancy Issued for Unpaid Rent or Utilities
- To dispute a One Month Notice to End Tenancy for Cause dated January 07, 2023 (the “Notice”)
- To suspend or set conditions on the Landlord's right to enter the rental unit
- To recover the filing fee

The Tenants appeared at the hearing. The Landlord appeared at the hearing with two representatives (the “Landlords”). 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.

The Tenants were going to call a witness at the hearing; however, the Tenants acknowledged at the end of the hearing that their witness was not relevant to the issues before me and therefore I did not hear from the witness.

The Tenants withdrew the request to dispute a 10 Day Notice. I dismissed the request to suspend or set conditions on the Landlord's right to enter the rental unit with leave to re-apply pursuant to rule 2.3 of the Rules.

Both parties submitted evidence prior to the hearing. I confirmed service of the hearing package and evidence and no issues arose.

The parties were given an opportunity to present relevant evidence and make relevant submissions. I have considered all evidence 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?
3. Are the Tenants entitled to reimbursement for the filing fee?

Background and Evidence

A written tenancy agreement and addendum were submitted, and the parties agreed they are accurate. The agreement was signed by the parties April 01 and 19, 2021. The tenancy started April 01, 2021, and is a month-to-month tenancy. Rent is due on the first day of each month. The Tenants paid a security deposit. In relation to a pet damage deposit, the agreement states it is \$0.00. The addendum includes a term about pets.

The Notice was submitted. The grounds for the Notice are:

1. Breach of a material term.
2. Pet damage deposit was not paid within 30 days as requested by the tenancy agreement.

The Details of Cause state:

Tenant have a dog on the property. Tenants had not paid a pet deposit to the Landlord. The Landlord is concerned about the amount of damage to the property being caused by the dog. The Landlord served the Tenants with a Demand Letter for the pet deposit on November 16, 2022 and gave the Tenants until December 16, 2022 to pay same. No payment was received.

1. Breach of a material term.

The Landlords could not point to a breach letter that had been sent to the Tenants.

2. Pet damage deposit was not paid within 30 days as requested by the tenancy agreement.

The Landlord knew the Tenants had a dog living in the rental unit when the tenancy agreement outlined above was signed by the parties.

The Landlord testified that they agreed the Tenants did not have to pay a pet damage deposit on the condition that they repaired damage caused by their dog to the rental unit and ensured their dog did not cause further damage. The Landlord testified that the Tenants did not do the required repairs, or did not do quality repairs, and that their dog has caused further damage in the rental unit. The Landlords pointed to letters in evidence which were sent to the Tenants about repairs and paying a pet damage deposit.

The Tenants testified that the Landlord agreed they did not have to pay a pet damage deposit if they repaired damage in the rental unit. The Tenants denied that the agreement was also that there would be no further damage. The Tenants testified that they did the required repairs. The Tenants relied on the written tenancy agreement showing the pet damage deposit was \$0.00. The Tenants also relied on section 20(c) of the *Act* in relation to when the Landlord was permitted to request a pet damage deposit.

I have reviewed all of the materials submitted. I note that the parties referred to emails during their submissions that are not before me. I find the most relevant documents before me to be the following:

- Tenancy agreement signed by the Landlord April 01, 2021, and the Tenants April 19, 2021
- Inspection report dated October 03, 2022
- Notice of Damage to Property dated November 16, 2022
- Demand to Pay Pet Deposit dated November 16, 2022
- Inspection report dated December 16, 2022

The Demand to Pay Pet Deposit dated November 16, 2022 states:

Per our agreement in April of 2021, we agreed that you would complete repairs to your rental unit as a result of damage caused by your dog and I would agree to not charge you a pet deposit. You acknowledge that the repairs were completed and you had shampooed the carpets on April 8th. Based on this premise, I agreed not to charge the pet deposit and sent out a revised rental agreement on April 9th 2021 with no pet deposit.

Since this time, each subsequent inspection has shown a significant amount of damage to your rental unit which far exceeds your rental security deposit. As a result of continued and increased damage to your rental unit, I am therefore demanding payment of your pet deposit in the amount of \$1,450.00 representing 50% of your monthly rent at start of your lease agreement. This is within the guidelines of the BC Rental Tenancy Guidelines.

Payment is required no later than December 16th, 2022. Failure to pay will result in a One Month Notice to End Tenancy.

Analysis

1. Breach of a material term.

I am not satisfied based on the evidence provided that the Landlord sent the Tenants a breach letter as required by section 47(1)(h) of the *Act* and RTB Policy Guideline 8. Given this, the Landlord did not have grounds to issue the Notice under section 47(1)(h) of the *Act*.

2. Pet damage deposit was not paid within 30 days as requested by the tenancy agreement.

Section 47(1)(a) of the *Act* states:

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

- (a) the tenant does not pay the security deposit or pet damage deposit within 30 days of the date **it is required to be paid under the tenancy agreement** (emphasis added)

The Landlord has the onus to prove the grounds for the Notice pursuant to rule 6.6 of the Rules. The standard of proof is on a balance of probabilities meaning it is more likely than not the facts occurred as claimed.

The most relevant point in this matter is that the written tenancy agreement does not require a pet damage deposit. The Landlord knew about the Tenants' dog when the tenancy agreement was entered into and signed. If the Landlord wanted a pet damage deposit, the Landlord should have required one in the written tenancy agreement. If the pet damage deposit was only \$0.00 on the condition that the Tenants repair specific issues in the rental unit, the written tenancy agreement should have stated this.

Based on the agreement of the parties, I accept that, at some point, they agreed the Tenants did not have to pay a pet damage deposit if they repaired issues in the rental unit. I do not know the date this agreement was reached, or the details of this agreement, because there is no documentary evidence of it before me. The Landlord testified that the agreement included that the Tenant's dog would not cause any further damage to the rental unit; however, I do not accept this because the Tenants disputed this and there is no documentary evidence of this before me.

The Demand to Pay Pet Deposit states:

Per our agreement in April of 2021, we agreed that you would complete repairs to your rental unit as a result of damage caused by your dog and I would agree to not charge you a pet deposit. You acknowledged that the repairs were completed and you had shampooed the carpets on April 08, 2021. **Based on this premise, I agreed not to charge the pet deposit and sent out a revised [rental] agreement on April 09, 2021 with no pet deposit.** (emphasis added)

Based on the above, I find the parties agreed in April of 2021 about repairs and waiver of the pet damage deposit. The Landlord was obviously satisfied the Tenants had done the required repairs because the Landlord states that, based on the Tenants' acknowledgement that the repairs were done, the Landlord agreed not to charge a pet damage deposit and sent out the tenancy agreement stating this. If the Landlord was not satisfied the Tenants had done the required repairs, the Landlord should not have signed the tenancy agreement with no pet damage deposit required. If the Landlord chose not to check that the Tenants had done the required repairs before signing the tenancy agreement with no pet damage deposit required, this is the fault of the Landlord and the Landlord bears the consequences of that.

I find the agreement between the parties about the Tenants doing required repairs and the Landlord waiving the pet damage deposit occurred prior to the parties signing the tenancy agreement and therefore the parties contemplated this issue prior to the Landlord waiving a pet damage deposit. The Landlord could not later change their mind and demand a pet damage deposit. The Landlord cannot unilaterally change the tenancy agreement. I also agree with the Tenants that section 20(c) of the *Act* applies:

20 A landlord must not do any of the following:

(b) require a pet damage deposit at any time other than

- (i) when the landlord and tenant enter into the tenancy agreement, or
- (ii) **if the tenant acquires a pet during the term of a tenancy agreement**, when the landlord agrees that the tenant may keep the pet on the residential property;

Here, the Landlord did not require a pet damage deposit when the tenancy agreement was entered into. Further, the Tenants' dog was not acquired during the tenancy but before the parties entered into the tenancy agreement.

Although I understood the Landlord to say that the waiver of the pet damage deposit in the tenancy agreement was conditional on the Tenants doing repairs in the rental unit, I find that the Demand to Pay Pet Deposit shows otherwise and shows that the parties discussed and resolved the matter prior to signing the tenancy agreement before me.

Given the above, I find the Tenants were not required to pay a pet damage deposit and the Landlord cannot now require the Tenants to pay a pet damage deposit. The Landlord did not have grounds to issue the Notice under section 47(1)(a) of the *Act*.

Given the above, the Landlord did not have grounds to issue the Notice and the Notice is cancelled. The tenancy will continue until otherwise ended in accordance with the *Act*.

Given the Tenants have been successful in the Application, they are entitled to reimbursement for the \$100.00 filing fee pursuant to section 72(1) of the *Act*. Pursuant

to section 72(2) of the *Act*, the Tenants can deduct \$100.00 from their next rent payment.

Conclusion

The Notice is cancelled. The tenancy will continue until otherwise ended in accordance with the *Act*.

The Tenants can deduct \$100.00 from their next rent payment.

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 24, 2023

Residential Tenancy Branch