



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes CNC

Introduction

This hearing dealt with the Tenant's February 3, 2023 application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- cancellation of the One Month Notice to End Tenancy for Cause (the Notice), pursuant to section 47.

All were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

At the outset of the hearing all the parties were clearly informed of the Rules of Procedure.

Preliminary Issue

- No signature on Notice submitted into evidence.

Both the Tenant and Landlord confirmed the Tenant received a copy of the Notice that was signed.

- New reasons for Notice.

The Landlord wanted to add new reasons for issuing the Notice that were not described on the original Notice. I informed the Landlord that in order to maintain fairness to all parties this hearing would only focus on the reasons listed on the Notice. To allow new reasons to be added, that were not originally listed on the Notice, would violate the Tenant's right to procedural fairness and specifically the right to be informed of the case against them.

Issue(s) to be Decided

- Is the Tenant entitled to an order cancelling the Notice?

Facts and Analysis

I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure. I refer only to relevant facts and information in this decision.

The parties confirmed the following details with respect to the tenancy:

- The tenancy began December 10, 2022.
- The rent is \$800 per month.
- Rent is due on the 10th day of the month.
- The Landlord took a damage deposit of \$400 and a pet damage deposit of \$400.
- The Landlord no longer retains the damage deposit as it was put towards rent for February 2023 that the previous tenant WS did not pay.

The Landlord served the Notice on the Tenant, in-person, on February 1, 2023. The reason for issuing the Notice was indicated as Tenant is repeatedly late paying rent and the Landlord listed other reasons under the “Details of Cause” section. These reasons included, failure to return a copy of rental agreement as agreed, had an extra dog for 1 month and did not notify the Landlord and permitted others to smoke in the apartment.

I will address each reason for cause below.

Repeated Late Payment of Rent

The Landlord testified that the previous tenant WS was late paying rent February 2023. The Landlord further testified that this was the only time either tenant was late paying rent. The Tenant testified that the Ministry pays their portion of the rent directly on the third or fourth Wednesday of each month. The Tenant further testified that their rent has never been late.

According to Policy Guideline 38, a minimum of 3 late payments justifies a notice. Both parties testified that rent was only paid late once, which does not qualify as repeated late payment of rent.

Rental Agreement

The Landlord testified they only received the tenancy agreement back from the Tenant on February 10, 2023. Based on the evidence and testimony presented, I am unable to conclude that any of the reasons of cause have been established.

Extra Dog

The Landlord testified that in December 2022 the Tenant had an extra dog staying at the rental unit that the Landlord did not know about. The Landlord stated there was no specific term in the tenancy agreement limiting the number of pets but that the Tenant only paid to have one small dog. The Landlord further testified that they never gave a written letter stating the Tenant had to get rid of the dog but did speak to the Tenant in person and asked that the owner take the dog back.

The Tenant testified that the dog came to stay with them on short notice after its previous housing fell through. The Tenant further testified that once the Landlord asked that the dog leave, the Tenant contacted the owner, but because the owner was working out of town the process took a bit longer. The Tenant testifies that the dog was returned to the owner within 2 weeks of the Landlord informing the Tenant the dog had to go.

I find that the tenancy agreement does not contain any material terms about the number of pets the Tenant can have. Even if this was a material term, the Tenant fixed the issue within 30 days and the Landlord never issued a warning letter informing the Tenant they were in breach of a material term. Accordingly, I find that the Landlord has not established on a balance of probabilities that the Tenant breached a material term of the tenancy agreement or that the extra dog meets another reason for cause listed on the Notice.

Smoking Indoors

The Landlord testified that the Tenant allows guests to smoke cigarettes inside the rental unit. The Landlord further testified that they are allergic to the smoke and that the smoke comes up the vent to their unit. When asked if the Tenant is still allowing others to smoke in the rental unit, the Landlord testified that they were not sure but sometimes they still smell smoke in their unit.

The Tenant testified that the Landlord's son also smokes inside his area and that smoke coming into the Landlord's unit could be caused by the son smoking inside. In response, the Landlord stated that the focus of this hearing isn't their son but the actions of the Tenant. The Tenant further testified that when people started smoking inside, they asked them to stop. Additionally, as of recently the Tenant states that they only have people smoke outside or at the door.

While the Tenant did admit that people have smoked inside, despite their attempts to stop this, the Landlord has not met the burden of establishing that this reaches the level of unreasonable behaviour. Additionally, given that the Landlord's son also smokes indoors, there is not enough evidence to support where the smoke odour is coming from.

The Landlord has not satisfied me that the Tenant or a guest of the Tenant has significantly interfered with or seriously jeopardized the health or safety or lawful right of the Landlord.

Based on the above, I conclude that the Landlord has not met the burden of establishing cause. I find the Notice is cancelled and of no force or effect.

Conclusion

I grant the Tenant's application to cancel the Notice. The tenancy will continue until it is lawfully ended in accordance with the provisions of 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: May 30, 2023

Residential Tenancy Branch