



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Ministry of Housing

A matter regarding ABIR DERBAS→HARRON INVESTMENTS
INC. and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC, FF

Introduction

This hearing convened to deal with the tenant's application for dispute resolution (application) seeking remedy under the Residential Tenancy Act (Act). The tenant applied for an order cancelling the One Month Notice to End Tenancy for Cause (Notice/1 Month Notice) issued by the landlord and recovery of the filing fee.

The hearing began on November 7, 2022, and could not be concluded due to time constraints. An Interim Decision was rendered on November 7, 2022, and that Interim Decision is incorporated by reference and should be read in conjunction with this Decision.

The hearing reconvened on March 3, 2023, and could not be concluded due to time constraints. An Interim Decision was rendered on March 4, 2023, and that Interim Decision is incorporated by reference and should be read in conjunction with this final Decision.

At all hearings, the parties, witnesses and advocates were provided the opportunity to present their affirmed testimony and relevant, accepted evidence and make submissions to me.

I have reviewed all oral, written, and other evidence before me that met the requirements of the Residential Tenancy Branch (RTB) Rules of Procedure (Rules). However, not all details of the parties' respective submissions and or arguments are reproduced in this Decision. Further, only the evidence relevant to the issues and findings in this matter are described in this Decision, per Rule 3.6.

Words utilizing the singular shall also include the plural and vice versa where the context requires.

Preliminary and Procedural Matters-

During the final hearing, after the tenant's submissions had concluded and prior to making final statements and/or rebuttal, the landlord's advocate, LM, requested to recall their witness, NB, who testified at the hearing on November 7, 2022. LM submitted that this was due to the testimony of the tenant's witness from the hearing on March 3, 2023. LM said that the tenant's witness, JB, was not truthful in their testimony regarding their acquaintanceship with NB and wanted NB to rebut the testimony of JB.

I declined this request. The hearing began on November 7, 2022, and required 3 separate hearings. The issue was whether this tenancy ends or continues. I find it procedurally unfair to allow further delays to conclude these matters. Part of my reason for declining the request was in consideration of then having to allow the tenant to recall their witness in rebuttal of NB, potentially further delaying the conclusion of these matters.

Further, in allowing a witness to be recalled I find would be procedurally unfair to all of those that have prepared to take time off to attend the limited time scheduled for this hearing. I further find that all parties should have asked all pertinent questions of a witness at the time the witness was called.

I used my discretion to determine the relevance and credibility of all witnesses and evidence in making a final Decision.

Issue(s) to be Decided

Has the landlord submitted sufficient evidence to support the Notice to end the tenancy?

Should the Notice be cancelled or enforced?

Background and Evidence

I heard evidence that the tenancy officially began on March 1, 2014, the tenant moved in on February 19, 2014, current monthly rent is \$1299 and the tenant paid a security deposit of \$550. Filed in evidence was the written tenancy agreement.

The Notice was dated July 25, 2022, for an effective move-out date of August 31, 2022, and was served to the tenant by attaching it to the tenant's door. In their application, the tenant confirmed receiving the Notice.

The reason listed on the Notice to end tenancy was breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.

In the details of the causes listed on the Notice, the landlord stated the following:

Details of the Event(s):

During the inspection of rental unit of [redacted] ("the tenant") on June 7, 2022, it was noted that the tenant had a pet (cat) in her unit.

At the same moment, the tenancy agreement with the tenant shows that as per paragraph 18, pets are not permitted without a written consent of the landlord. There is nothing in the tenant's file that indicates that permission was ever requested or granted for the tenant to have a pet in the rental unit.

That was considered a material breach of tenancy agreement, and the tenant was given Material Breach of Tenancy Agreement Notice in person, by Landlord's agent - [redacted] on June 9th, 2022. The Notice stated that the breach must be remedied within 30 days, or it may result in a Notice to End Tenancy being issued. The tenant had to remove the pet from the rental unit within 30 days, and provide the landlord with written verification. The follow up inspection of the tenant's unit on July 8th, 2022 by [redacted] confirmed that the cat was still in the unit. So, the tenant was given the Final Second Notice to remove the pet from the rental unit by July 24th 2022, and provide the landlord with written verification. Neither of that was done by the tenant - so, the Notice to End Tenancy was issued on July 25th, 2022.

[Reproduced as written except for anonymizing personal information to protect privacy]

Filed in evidence was a copy of the 1 Month Notice, accompanied by letters of June 9, 2022, and July 8, 2022, reminding the tenant of paragraph 18 of the written tenancy agreement that pets are not permitted without the written consent of the landlord.

In her application, the tenant wrote the following:

The Landlord has given me 30 days notice to remove my Cat from my Unit or it will result in a Notice to End Tenancy. My Cat is a therapeutic cat. My Psychologist has recommended to have a cat to help with my Anxiety and Panic attack's. I've my cat since 2018 I've told previous Manager about the cat and was willing to give a Copy of Dr note along with damage deposit but Previous Manager has said No need. I Cannot live with out my cat, having her is been a great help emotionally and mentally.

[Reproduced as written]

The landlord's advocate provided the following submissions and references to their documentary evidence:

The landlord brought the residential property in 2014 and any tenant who had a pet at that time was allowed to keep their pet, as they were “grandfathered”. The tenant did not have the written consent of the landlord prior to obtaining her cat and the cat was not living in the rental unit in 2014 when the landlord bought the property. The tenant was given two written warning letters, in June and July 2022, after it was discovered in an inspection in June 2022 the tenant had a pet. Despite these written warnings, the tenant did not remove her cat and was served the 1 Month Notice.

The landlord’s witness, NB, provided the following testimony, as follows:

NB was the previous resident building manager, from February 2014 through April 2020. They remembered asking the tenant about the cat in 2018, telling the tenant they could not keep the cat. NB told the tenant to give them a doctor’s letter regarding the cat. They were aware in 2018 the tenant had a cat. As to follow-ups, there were probably inspections.

The tenant signed the standard tenancy agreement which includes a term that pets are not permitted without the landlord’s written consent.

The landlord’s advocate submitted that the landlord considered the referenced term of the written tenancy agreement was material because having a pet requires permission. If the person had applied for permission for a pet, it would have been denied. However, in this case, the tenant failed to apply for permission for their cat. The reasoning behind this is that the residential property is an older building and a security deposit would not cover the damage from a pet.

In cross-examination by the tenant’s advocate GR, NB responded:

The tenant provided a verbal request for the cat, but did not provide a written request. NB said they did not follow-up on the matter relating to the cat in the tenant’s rental unit.

The landlord, RS, provided the following testimony:

The residential property is a 3 story, 35-36 unit apartment building. 5-6 of the units have pets, but they belonged to the tenants who had pets when they bought the building. There is MDF particle board in the rental units, which would have to be replaced. The tenant has shared the landlord’s personal information on social media in relation to this dispute and they have been the subject of on-line bullying, causing the landlord to open

a file with the RCMP. Although they have compassion for the tenant, the landlord has to be consistent with their pet policy.

Tenant's responses –

GR argued that the term referred to the written tenancy agreement was not a material term, but that even if it was, the landlord is barred by estoppel due to past behaviour. The landlord is attempting to raise the monthly rent with these evictions. The tenant's monthly rent of \$1299 is low for the current rental market. The tenant's evidence shows the number of pets in the building and there is no evidence to support that these pets all are there with written permissions. NB was aware of the tenant's cat and took no formal steps to come into compliance.

The tenant provided the following testimony, in part as follows:

Their cat has been living in the rental unit since 2018, that she had a talk with NB about the cat, telling NB she could provide a doctor's statement, however, NB declined, saying to not bother with it. Until last year when she received the first notice, the landlords never made mention of her cat. This was the first warning since obtaining the cat in 2018.

In cross examination by LM, the tenant said she obtained the cat in 2018, and several weeks later, NB mentioned the cat. NB said there was no need for a doctor's note.

In questioning by GR, the tenant said when she signed the tenancy agreement with NB, NB did not draw her attention to the pet clause. She has known NB since 2012 and had a good relationship with her. At the time she got her cat, she was socializing with NB, such as having drinks or dinners. They socialized all the time, they were friends and celebrated birthdays.

The tenant's witness JB testified to the following:

She met the tenant at their job and became socially acquainted, coming to the tenant's apartment for dinners, beginning in 2017. When she went to the apartment, she saw other pets in the building. She first met NB in 2018. She saw NB coming into the tenant's apartment and playing with the cat. It seemed like NB loved the cat.

In cross examination by LM, the witness said she saw NB in the rental unit all the time. She confirmed that in the last few months, she sent RS an email saying that pets should be allowed anywhere.

Landlord's rebuttal –

LM submitted that the issue here is that the tenant had a cat without the landlord's written permission, violating the written tenancy agreement. The tenant additionally violated RS' privacy as well as other tenants' privacy by taking photographs. Although other pets have been in the building, the landlord has dealt with them in arbitration, apart from the ones grandfathered in when RS purchased the property.

Additionally, LM stated the tenant's witness, JB, lied and had NB been allowed to be recalled, NB would have said that she does not know JB. Once the landlord became aware of the cat, the landlord took action.

RS stated that he has been in the rental unit every year since purchasing the property for the annual inspection and saw no sign of a cat living there, such as cat food or food and water bowls, or toys. When there was a fire inspection and they noticed damage to the floorboard, the tenant was evasive about the cause of the damage.

RS further stated that while he personally likes animals and has done volunteer work for an animal rescue organization, he has now been personally attacked due to the tenant's release of his personal information to social media. He has tried to work with the tenant to relocate to another of their buildings that is pet friendly, but the tenant refused.

Tenant's surrebuttal –

In questioning by GR of the tenant, the tenant said there was an inspection of the rental unit in March 2023 with the landlord, who offered the tenant \$15,000 to move out, and the tenant refused. The tenant said they recorded the conversation. RS then said sooner or later he would evict the tenant.

In closing, GR said that the case largely hinges on whether the term in the tenancy agreement at issue is material. Other terms are highlighted, but the term requiring the landlord's written permission for a pet was not highlighted. There was other evidence that the landlord's agent, NB, attended the rental unit number numerous times,

observing the cat, and that the landlord should be estopped from enforcing the term as they chose not to enforce the term in 2018 when they knew about the cat.

Both parties submitted evidence other than that already referenced, which I have reviewed and will refer to below as necessary.

Analysis

Based on the relevant oral and written evidence, and on a balance of probabilities, I find as follows:

In an application to cancel a 1 Month Notice, the landlord has the onus of proving on a balance of probabilities that the reason set out in the notice is met.

Where one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof has not met that burden.

Section 47(1)(h) of the Act authorizes a landlord to end a tenancy if 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.

Residential Tenancy Branch Policy Guideline 8 states that a material term is a term that is of such importance that the most trivial breach of the term gives the other party the right to end the tenancy and does not become material due to its inclusion in the written tenancy agreement.

Policy Guideline 28 states as follows:

“.. if a landlord is aware of the breach of a pets clause and does not insist on compliance and does something which clearly indicates that the pet is acceptable, the landlord may be prohibited from ending the tenancy for that breach. This is called "waiver". It is important to note that it is not a waiver of the pets clause itself, but only a waiver of the landlord's right to terminate the lease for that particular breach. Where a landlord makes a clear representation to the tenant that the pet is acceptable, the landlord may later be prevented from claiming the pets clause has been breached.

Although a significant amount of oral and documentary evidence was submitted at the extended hearing in these matters, I have focussed on the relevant and compelling evidence.

In particular, I considered the testimony and written statement of the landlord's witness, NB, the resident building manager from January 2014 to April 2020. I find her written statement does not conflict with the tenant's testimony and documentary evidence. NB stated she never approved the cat. However, NB did not deny that the tenant subsequently informed NB about the cat, or brought the cat to NB's attention. NB did not deny that she told the tenant there was no need for a doctor's note. Importantly, NB agreed she was aware of the tenant's cat and took no formal steps to come into compliance.

While NB was not recalled after her original testimony at the November 7, 2022, hearing, for the reasons noted above, this tenant's statement was included in the tenant's written evidence, giving NB full opportunity to provide rebuttal testimony. I specifically note that NB's rebuttal testimony in which they would have denied knowing JB, according to the landlord's advocate, would not have been determinative in this matter.

NB further stated they remember asking the tenant about the cat in 2018. For this reason, I find the consistent evidence establishes that the tenant obtained a cat in 2018. I further find there was insufficient evidence that the landlord or agents took any action to have the tenant come into compliance or otherwise address the matter with the tenant until a new resident building manager noted the cat during an inspection in or around June 2022, issuing the first warning letter at that time.

In this case, I find the legal principle of 'estoppel' applies to this application.

Estoppel is a rule of law that states when one party, the landlord here, by act or words, gives the other party, the tenant here, reason to believe that a certain set of facts upon which the other party takes action, the first party (landlord) cannot later, to their benefit, deny those facts or say that their earlier act was improper. The rationale behind estoppel is to prevent injustice owing to inconsistency.

In effect, estoppel is a form of waiver, when one party does not enforce their rights and the other party relies on this waiver.

Therefore, I find that when the landlord's agent knew that the tenant had a cat in 2018 and failed to follow-up with, or take action on, the matter at that time, or at any time until June 2022, the landlord waived their right to seek enforcement of the term in the tenancy agreement, more particularly, paragraph 18. Further, I do not find it reasonable that no one on behalf of the landlord, such as a resident building manager, or the landlord, noticed the cat until mid-2022, when the first warning letter was issued, when the cat had been living in the rental unit since early 2018.

For these reasons, I find the landlord is estopped from retroactively seeking enforcement of paragraph 18 of the written tenancy agreement.

On this basis, I order the One Month Notice dated July 25, 2022 is **cancelled** and of no force or effect. The tenancy shall continue until it is ended in accordance with the Act.

The tenant's application to cancel the Notice is **granted**.

As the tenant's application was granted, I find the tenant is entitled to the recovery of the \$100 filing fee. I **authorize** the tenant a one-time rent reduction in the amount of **\$100** from a future month's rent in full satisfaction of the recovery of the cost of the filing fee. The tenant should inform the landlord when making this deduction so that the landlord has no grounds to serve a 10 Day Notice in that event.

Further findings and orders -

Pursuant to section 62(2), I **find and order** that the tenant is allowed to keep the cat she presently has living with her in the rental unit for the duration of this tenancy and I order the landlord to not make any further attempts to enforce this term of the tenancy agreement, as to the tenant's present cat.

Further, having reviewed the written tenancy agreement, I find that paragraph 18 of the parties' written tenancy agreement, PETS, **is a material term** of the tenancy agreement. The term specifically states that it is a material term and the tenant signed the tenancy contract agreeing to the terms.

Pursuant to section 62(3) of the Act, I **order** that from the date of this Decision the tenant is now bound by paragraph 18 of the written tenancy agreement for any pet other than the cat at issue in this dispute and must comply with that term if she wishes to continue to reside in the rental unit. The tenant is informed that had I not found that the

landlord was estopped from enforcing paragraph 18 for the reasons noted, I would have upheld the 1 Month Notice.

I also **order** the tenant to provide the landlord with specific identifying information for the cat presently living in the rental unit. This could include name, age, photos, and non-private records within two (2) weeks of this Decision.

I also find it necessary to inform the tenant that the only animal specifically mentioned as being exempt from a term prohibiting or restricting pets is under the [Guide Dog and Service Dog Act](#). Therefore, the doctor's letters submitted in these matters regarding her cat are not relevant to these proceedings and did not form any basis for this Decision.

I inform the parties I did not address the landlord's allegations as to the tenant's posting the landlord's private information on social media, as the landlord confirmed this matter has been referred to the RCMP.

Conclusion

For the reasons mentioned in this Decision, the tenant's application is granted.

The 1 Month Notice has been cancelled and the tenancy is ordered to continue until it may legally end under 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*. Pursuant to section 77(3) of the Act, a decision or an order is final and binding, except as otherwise provided in the Act.

Dated: July 10, 2023

Residential Tenancy Branch