



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards
Ministry of Housing and Social Development

Decision

Dispute Codes: CNC OPC MNR MNSD FF

Introduction

This hearing dealt with an application by the tenant to cancel a notice to end tenancy, and an application by the landlord for an order of possession, a monetary order and an order to retain the security deposit in partial compensation of the claim. During the hearing the landlord stated that the monetary amount claimed was for unpaid rent that has since been paid, and I accordingly dismiss the monetary portion of the landlord's claim. One of the two tenants and the landlord participated in the teleconference hearing.

Issue(s) to be Decided

Is the notice to end tenancy valid?

Background and Evidence

The relevant evidence was as follows. The tenancy began on October 1, 2007. The written tenancy agreement makes no reference to the issue of whether or not the tenants may have pets. In February 2009 the tenants asked the landlord about getting a dog. The landlord responded that she'd have to check the strata bylaws. The tenants did not ask again about a dog, and then the landlord discovered that the tenants did have a dog. The landlord did not give the tenants permission for the dog, and did not receive a pet deposit from the tenants. On May 28, 2009 the landlord gave the tenants written notice that they must remove the dog by June 30, 2009. On July 1, 2009 the landlord served the tenants with a one month notice to end tenancy for cause, and cited

the reason for ending the tenancy as follows: "Breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so."

Analysis

I find that the notice to end tenancy is not valid, as the landlord could not establish that the issue of pets was a material term of the tenancy agreement. The written tenancy agreement was silent regarding the issue of pets. If the issue of pets had been a material term, then it ought to have been included in the written agreement. Therefore, the landlord cannot rely on the cited cause of "breach of a material term of the tenancy agreement" to end the tenancy.

Conclusion

The landlord's application is dismissed. The landlord is not entitled to recovery of the filing fee for the cost of her application.

The notice to end tenancy is cancelled, with the effect that the tenancy continues. The tenants are entitled to recovery of their \$50 filing fee. I grant the tenants an order under section 67 for the balance due of \$50. This order may be filed in the Small Claims Court and enforced as an order of that Court.

Dated October 13, 2009.