



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes CNC, FF, O

Introduction

This hearing dealt with an Application for Dispute Resolution by the tenants to cancel a Notice to End Tenancy for Cause, some other issues and a Monetary Order to recover the filing fee.

The tenant served the landlords wife in person on November 02, 2009 with a copy of the Application and Notice of Hearing. I find that the landlord was properly served pursuant to s. 89 of the *Act* with notice of this hearing.

Both parties appeared, gave affirmed testimony, were provided the opportunity to present their evidence orally, in written form, documentary form, to cross-examine the other party, and make submissions to me. On the basis of the solemnly affirmed evidence presented at the hearing I have determined:

Issues(s) to be Decided

- Have the tenants provided sufficient evidence that the Notice to End Tenancy can be cancelled?
- If not is the landlord entitled to an Order of Possession?
- Are the tenants entitled to recover the filing fee from the landlord for the cost of the application?

Background and Evidence

This tenancy started on March 01, 2008 and a new tenancy agreement was entered into on April 01, 2009. This is a fixed term tenancy ending on March 31, 2010. The tenants pay a monthly rent of \$967.00 which has been paid on or before the 1st of each month.



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The tenants testify that the landlord wants to sell the property and gave them a One Months Notice to End Tenancy for Cause on October 31, 2009 giving the following reasons.

the tenant or a person permitted on the residential property by the tenant has

(i) significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property,

(ii) seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant, or

(iii) put the landlord's property at significant risk;

(e) the tenant or a person permitted on the residential property by the tenant has engaged in illegal activity that

(i) has caused or is likely to cause damage to the landlord's property,

(ii) has adversely affected or is likely to adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant of the residential property, or

(iii) has jeopardized or is likely to jeopardize a lawful right or interest of another occupant or the landlord;

The tenants dispute the reasons given in the landlords Notice and feel they have been given the Notice because the landlord is trying to sell the property.

The landlord testifies that the tenant kept a cat despite the strata rules stating that no pets are allowed. The tenants are operating a day care from the property without his consent. The



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landlord testifies that by keeping a cat the tenants have significantly interfered with or unreasonably disturbed the landlord in the event the cat was to urinate or spray on the floor of the unit this could ruin the floor. That if the cat was to urinate this may cause allergies to other people occupying the unit in the future and by keeping the cat the tenants have put the landlords property at risk as the cat may damage the carpet and flooring.

The landlord testifies that the tenants have engaged in an illegal activity by keeping the cat and by operating a day care without his permission. The other reasons given on the notice pertain to the cat and any potential damage it may cause.

The tenant's testify that when the landlord notified them that they were not to keep a cat they removed the cat from the premises and no longer have a pet. The tenants have provided a copy of the strata rules which show that a person occupying the property may keep one cat. The tenants testify that the landlord has never given them a warning letter about the cat or concerning the day care operating from the unit. The tenants have provided a copy of their tenancy agreement that does not show that a cat is not allowed on the premises and the landlord has ticked the box on this agreement that shows that no addendum has been added to the agreement.

The landlord has provided a copy of his tenancy agreement which shows a hand written addendum at the end of the agreement which states that 'no pets and no smoking inside'. Both parties claim the other party has altered their agreement.

Analysis

I have carefully considered all the evidence before me, including the affirmed evidence of both parties. I find the landlord has not shown suitable grounds to end the tenancy. The tenants have removed the cat from the property and as such the landlord has not shown that the cat has or is likely to have damaged the property in any way. I also find the landlord has not given the tenants any warning in writing about the day care operating from the property and I find the reasons given by the landlord to end the tenancy are frivolous.



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I further find that the tenancy agreement in place has been altered by one party and as the tenants have now removed the cat and do not have a pet I am not prepared to make a ruling as to which party has altered the tenancy agreement. I would however point out that both agreements do show that there is no addendum to the agreement.

I find that the Landlord has not provided sufficient evidence to show that grounds exist to end the tenancy and as a result, the Notice is cancelled and the tenancy will continue.

Conclusion

The tenant's application is allowed. The one Month Notice to End Tenancy for Cause dated October 31, 2009 is cancelled and the tenancy will continue. As the tenants have been successful in setting aside the Notice, they are entitled to recover the \$50.00 filing fee for this proceeding and may deduct that amount from the next rent payment when it is due and payable to the landlord.

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: December 22, 2009.

Dispute Resolution Officer