Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC

Introduction

This hearing dealt with the tenant's application to cancel a 1 Month Notice to End Tenancy for Cause. Both parties appeared at the hearing and were provided the opportunity to make relevant submissions, in writing and orally pursuant to the Rules of Procedure, and to respond to the submissions of the other party.

On a procedural note, the tenant was of the position that a 10 Day Notice she received November 7, 2011 would be dealt with during this proceeding. I determined that the tenant had not amended her application and had not served notification upon the landlord that she was disputing the 10 Day Notice. The landlord confirmed that they were not aware or prepared to deal with dispute of a 10 Day Notice during this proceeding. Accordingly, the parties were advised that I would not deal with the 10 Day Notice with this application and the tenant was informed of her right to file another Application for Dispute Resolution to dispute the 10 Day Notice and seek more time to make that application.

Issue(s) to be Decided

Should the Notice to End Tenancy for Cause be upheld or cancelled?

Background and Evidence

It was undisputed that the tenancy commenced in 2005 and the tenant is currently required to pay rent of $744.00 on the 1st day of every month. On October 31, 2011 the landlord issued a 1 Month Notice to End Tenancy for Cause (the Notice) and put it in the door frame of the tenant's door that day. The Notice indicates two reasons for ending the tenancy:

- Tenant has caused extraordinary damage to the unit or property; and,
- Breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.

The landlord testified that on October 24, 2011 the landlord inspected the rental unit and noted four damaged doors, including broken door frames and holes in the door; and, damaged kitchen cupboards, including missing drawer fronts. The landlord did not observe a cat in the rental unit on that date.

The landlord testified that on October 27, 2011 maintenance persons attended the unit to measure for window coverings. Upon entering a bedroom a black kitten was observed and a strong odour of urine and feces was present.

The landlord submitted that the damaged doors and cupboards constitute significant damage to the unit and having a cat in the unit is a breach of a material term. The landlord pointed to the tenancy agreement in support of the position that the no pet clause is a material term. The landlord acknowledged that a breach letter was not given to the tenant. The landlord was of the position that a written breach letter was not necessary as the tenant had previously promised to abide by the terms of her tenancy agreement during a previous dispute resolution proceeding in 2010. This promise was followed up by an email written by the tenant.

The tenant submitted that some of the damage to the unit occurred in 2006 for which the tenant had given the landlord $800.00 in compensation. The tenant acknowledged a hole in daughter's bedroom door and attributed it to the door coverings being thin. The tenant acknowledged drawer fronts had come off but explained they were old and the glue no longer held them on. The tenant had tried to fix the cupboards herself but was unsuccessful. The tenant submitted that the landlord conducts inspections every year but does not make repairs to the unit.

The tenant acknowledged there was a kitten in her unit from the dates of October 26 – 28, 2011 and explained that the kitten was purchased by her parents when they were in town visiting the tenant. The tenant explained that the smell of cat urine and feces was the litter box smell. The tenant testified that other tenants have pets and that the no pet clause has not been enforced against those tenants. The tenant submitted that she did not think that allowing her parents to bring their cat to her unit for two days would jeopardize her tenancy.

The tenant's witness testified that the witness had taken the tenant's parents and the kitten to the airport on October 28, 2011. The witness testified that when she arrived to pick up the tenant's parents the cat litter box had been packed up and the room did not smell of cat urine or feces.

Finally, the tenant submitted that she has invited the landlord to attend the unit to see for himself that there is no cat in her unit and that there is no smell of cat urine or feces; however, the landlord declined her request. The landlord acknowledged that the landlord has not attended the property since October 27, 2011.

Analysis

Where a Notice to End Tenancy comes under dispute the landlord bears the burden to prove, based on a balance of probabilities, that the tenancy should end for the reason(s) indicated on the Notice. 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 the onus to prove their claim and the claim fails.

From the landlord's documentary evidence, it is clear that there was damage to the unit in 2006, including bedroom and bi-fold doors. However, it is also clear that the tenant compensated the landlord $800.00 for the damage in 2006. Having heard the landlord conducts annual inspections, it is unclear to me why the landlord did not submit the annual inspection reports so that it could be determined whether this damage was form 2006 or some other time. I find the verbal testimony insufficient to conclude the tenant caused extraordinary damage to the rental unit other than the damage the tenant compensated the landlord for in 2006. Therefore, I find the landlord has not met the burden of proving the tenancy should end for this reason.

With respect to the cat being in the rental unit I find the tenant did violate section 8. h) of her tenancy agreement. This part of the tenancy agreement provides:

> **"Guests are not permitted to bring their dogs or cats onto the property for any length of time."**

The term is bolded and the tenant initialled the space provided beside section 8. h) of the tenancy agreement acknowledging that she had read it.

I have not determined whether section 8. h) of the tenancy agreement is a material term as I am satisfied the landlord did not provide the tenant with written notification to correct the breach.

In order to end a tenancy for breach of a material term, section 47 of the Act requires:

> (h) the tenant
>
> (i) has failed to comply with a material term, and
>
> (ii) has not corrected the situation within a reasonable time after the landlord gives written notice to do so;
>
> [my emphasis added]

The Act is clear that it is the landlord that must give the tenant written notice to correct the breach. Therefore, I reject the landlord's position that the tenant's written agreement to abide by the tenancy agreement in 2010 satisfies the requirements of section 47(h) of the Act.

In light of the above, I cancel the Notice to end Tenancy issued October 31, 2011 with the effect that this tenancy continues until such time it legally ends.

With this decision, the tenant is considered fully aware that her guests are not allowed to bring their dogs or cats onto the property for any length of time.

Conclusion

The 1 Month Notice to end Tenancy for Cause, issued October 31, 2011 is cancelled and the tenancy continues until such time it legally ends.

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: November 25, 2011.

Residential Tenancy Branch