



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Bayside Property Services
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC, MNDC, OLC, FF

Introduction

This hearing was convened in response to an application filed by the tenant seeking:

1. To cancel a Notice to End Tenancy given for cause;
2. A monetary Order for compensation for damage and/or loss in the sum of \$3,700.00;
3. An Order compelling the landlord to comply with the Act; and
4. Recovery of the filing fee paid for this application.

Both parties appeared at the hearing of this matter and gave evidence under oath.

Issue(s) to be Decided

Has the landlord proven cause to end this tenancy? Has the tenant proven she is entitled to compensation for damage and/or loss? Has the tenant proven the landlord should be compelled to comply with the Act? Should the tenant recover the filing fee paid for this application?

Background and Evidence

This tenancy began in April 1, 2012 as a month-to-month tenancy. Rent was fixed at \$425.00 per month. At one time the tenant was employed by the management company as a building manager. In late 2012 a new management company, named as landlords in this application, took over management of the building and the tenant's employment ceased although she remained as a resident in the building.

A previous hearing was held with respect to this tenancy on April 2, 2013. That hearing was held in response to an application by the tenant seeking to cancel a Notice to End Tenancy given for cause. In that hearing the landlord said that the tenant kept a pet

without permission. In a decision rendered April 2, 2013 I found that the tenant did have permission to have a pet and the Notice to End Tenancy was cancelled.

The landlord has now issued another Notice to End Tenancy dated April 26, 2012 stating that the tenant is in breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.

With respect to the breach the landlord referred to Clause 18 of the Tenancy Agreement which states as follows:

PETS. Having regard to the enjoyment, quiet possession and health requirements of other occupants in the residential property, as well as the nature of the property; the Tenant shall not keep, or allow to be kept, any animals or pets, domestic or wild, fur bearing or otherwise, unless specifically permitted in writing by the Landlord, which permission may be revoked by the Landlord at any time, particularly having regard to the factors set out above, which factors are not all inclusive. Where the Landlord has given his permission in writing, the Tenant shall ensure that his pets and animals do not disturb the other occupants in the residential property or adjoining property, and further the Tenant shall ensure that no damages.

(reproduced as written)

The landlord noted that permission to keep a pet "...may be revoked by the Landlord at any time..." therefore the landlord wrote to the tenant on April 5, 2013 stating in part:

Please note that per section #18 of your Tenancy Agreement permission to have pets living in the above noted rental unit may be revoked by the landlord at any time. Please consider this letter official revocation of any previous permission to have pets in the unit that may have been granted by the former Landlord. We thank you for governing yourself accordingly.

The landlord says that the tenant did not remove the pet from the rental unit and they therefore issued the April 26, 2013 Notice to End Tenancy for cause (breach of a material term).

The landlord acknowledges that there is a previous decision overturning a previous Notice to End Tenancy for Cause (breach of a material term) issued with respect to this tenancy and with respect to the same pet. However, the landlord says that the difference between that case and this case is that in the last case the landlord

maintained the tenant did not have permission to keep a pet and was found to have permission. In this case the landlord is revoking that permission under Clause 18 and the tenant has refused to comply and is therefore in breach of a material term of the contract.

The tenant says that her rent is \$425.00 whereas rents in the building range around \$800.00 to \$900.00 and this, along with outstanding issues between the parties regarding the tenant's former employment is the real reason the landlord are trying to evict her. The tenant says she is also having difficulties with the current building manager who she says is harassing her. The tenant's son appeared as a witness and testified as to an event or altercation he witnessed between the current building manager and his mother. The tenant says the owner is also harassing her and threatening her. The tenant says that issuance of this further Notice given after the earlier notice was overturned and after she was found to have permission to have a pet is simply a form of harassment.

Analysis

The pertinent part of Clause 18 states

Having regard to the enjoyment, quiet possession and health requirements of other occupants in the residential property, as well as the nature of the property; the Tenant shall not keep, or allow to be kept, any animals or pets... unless specifically permitted in writing by the Landlord, which permission may be revoked by the Landlord at any time, particularly having regard to the factors set out above, which factors are not all inclusive.

Under the *Residential Tenancy Act* terms which are unconscionable are not enforceable. Whether a term is unconscionable depends upon a variety of factors. To be unconscionable the term must be oppressive or grossly unfair. A test for determining whether a term is unconscionable is whether the agreement is so one-sided as to oppress or unfairly surprise the other party. I find Clause 18 to be one-sided. It does not allow the landlord to seek to end permission to keep a pet for a reasonable cause. It simply allows the landlord to revoke permission at will. When one party relies on the permission of another and that permission can be withdrawn at any point for no particular reason, the term can be used in an oppressive manner and I find that to be the case here. This is especially so when the permission being revoked is permission to keep a pet that a tenant has likely bonded with and likely keeps for quality of life reasons and companionship.

I find Clause 18 to be unconscionable and unenforceable. I will therefore allow the tenant's application seeking to cancel the Notice to End Tenancy given for cause in this matter. The effect of this decision is that this tenancy shall continue as though no notice had been issued.

With respect to the tenant's claim for compensation for harassment, harassment is defined in the Dictionary of Canadian Law as "engaging in a course of vexatious comment or conduct that is known or ought reasonably to be known to be unwelcome". As such, what is commonly referred to as harassment of a tenant by a landlord may well constitute a breach of the covenant of quiet enjoyment. There are a number of other definitions however all reflect the element of ongoing or repeated activity by the harasser.

The parties were before me on April 2, 2013 with respect to the landlord's notice to end tenancy for cause with respect to this pet. At that time I found the tenant had permission to have the pet and the notice was cancelled. The parties are back before me again with respect to a second Notice to End Tenancy for cause with respect to the same pet and the notice has been cancelled again. While there are only two incidents, in both cases the tenant has had to file paperwork to dispute the landlord's allegations and live with the threat of losing her home and/or her pet. I find that in issuing these notices, more likely for reasons that have more to do with the former employer-employee relationship than with the dog, that the landlord has harassed the tenant and acted in bad faith. The tenant has claimed \$3,700.00 in compensation in this regard and I find this to be excessive. However, I will award the tenant \$200.00 for the time and trouble she has had in being forced to defend herself two times in short order against the landlord's attempts to end her tenancy.

With respect to the tenant's application to compel the landlord to comply with the Act I find I have insufficient evidence to support such an Order is necessary. This claim is dismissed.

Conclusion

As the tenant has been successful in her application I will allow her to recover the \$50.00 filing fee she has paid for this application. To realize her awards, the tenant is at liberty to deduct \$250.00 from her next rental payment.

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: June 03, 2013

Residential Tenancy Branch

