



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Kekuli Centre
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC, MNDC, O

Introduction

This hearing was convened by way of conference call concerning applications made by the tenants as against the landlord for an order cancelling a notice to end tenancy for cause and for a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement. The applications have been joined to be heard together.

Both tenants attended the hearing with an Advocate and each of the tenants gave affirmed testimony. The landlord was represented by an agent who gave affirmed testimony and called one witness. The parties also provided evidentiary material to the Residential Tenancy Branch and to each other prior to the commencement of the hearing. The parties were given the opportunity to cross examine each other and the witness on the evidence and testimony provided, all of which has been reviewed and is considered in this Decision.

Issue(s) to be Decided

- Should either of the notices to end tenancy issued by the landlord be cancelled?
- Have the tenants established a monetary claim as against the landlord for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement, and more specifically for aggravated damages for loss of quiet enjoyment?

Background and Evidence

The parties agree that tenancy agreements provided for this hearing are the tenancy agreements between the landlord and each of the tenants. The tenancy agreement for Tenant #1 shows a month-to-month tenancy with a commencement date of April 1, 2011 for rent in the amount of \$325.00 payable on the 1st day of each month and a security deposit in the amount of \$162.50. The tenancy for Tenant #2 began on

September 1, 2008 for rent in the amount of \$325.00 per month payable on the 1st day of each month. The agreement shows that the tenant was to pay a security deposit in the amount of \$162.50, and both tenants still reside in their respective rental units.

The landlord's agent testified that rent is now \$375.00 per month and that both tenancies are on a month-to-month basis. She is the the acting manager and has been since September 1, 2014 and is in that position until a manager is found. She is also the bookkeeper for the landlord and has held that position since June, 2013. She is not a member of the board of directors.

The landlord's agent further testified that the rental complex has a no-pet policy which is contained in the tenancy agreement. Paragraph 22 of both tenancy agreements states: "No Pet Allowed (See Schedule 1) The tenant may NOT keep pets on the residential premises, which is in accordance with the rules and regulations in Schedule." A paragraph in the rules and regulations attached to the agreement states: "PETS – NO PETS ALLOWED Only by special permission and must be a registered Seeing Eye or Hearing –Ear Dogs. Poisonous reptiles and reptiles or insects are not permitted. Unsure about these policies with (the landlord), please contact the Property Manager and refer to the Pet Regulations provided with your Tenancy Agreement."

The landlord's agent further testified that the tenants both received a copy of a letter from the landlord dated May 28, 2014 providing all cat owning tenants 3 months notice to re-home their cats. The tenants did not re-home their cats, and the landlord issued notices to end the tenancies. Copies of the notices have been provided. A 1 Month Notice to End Tenancy for Cause was issued to each tenant dated August 21, 2014 with an expected date of vacancy of September 30, 2014. Both notices state that the reason for issuing them is: "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's agent does not know how or when either of them may have been served to the tenants; service was effected by a staff member who is no longer employed by the landlord.

The landlord's agent further testified that the rules are signed by tenants when they apply for tenancy, and is aware that a previous manager allowed tenants to have cats. The landlord's agent reported it to the board of directors, who govern the rental complex, and members were upset that the policy was not adhered to and that the board had not been informed. The landlord's agent was directed by the board to write and issue a letter to apologize to tenants that it had been allowed contrary to the rules. A copy of that letter has been provided and it is dated May 28, 2014 which states that the board of directors apologizes for recent confusion on the allowance of cats, that it is a breach of the agreement and failure to re-home the cats by August 31, 2014 will be

cause for eviction. The landlord's agent believes that the tenants have had their cats for a number of years.

The landlord's agent also testified that the previous managers hadn't completed inspections of rental units, and the board wanted them done, so the landlord's agent issued 2 notices to enter the rental units in May and 2 in June, 2014.

The landlord's agent further testified that a tenant was upset stating she was being evicted due to having a cat. The landlord's agent and the board of directors had not yet met and didn't know anything about an alleged eviction, so the landlord's agent tried her best to calm that tenant. There are a lot of cats in the building, and some tenants have told the landlord's agent that the previous manager gave permission. She believes that it was authorized as long as the board didn't know. As a result of the rumor, the landlord's agent sent an email to the previous manager advising about the rumor and stating that she had prepared a letter for some damage control and to clarify that no directive had yet been discussed. The previous manager replied that cat owners were all warned they may have to make a hard choice one day because the board had not approved cats.

The landlord's witness testified that she is a member of the board of directors, and has been on and off for the last 10 years, now since May, 2014, but does not reside in the rental complex, nor do any other board members. The complex also has a committee who meets with the housing manager and any issues or concerns to be addressed go to the committee and the board of directors consisting of 7 members. The housing manager gives notices to tenants. The process for changing a policy is to go to the committee who takes recommendations to the board of directors. The board of directors approves or disapproves by a majority vote.

The witness also testified that when it came to the attention of the board of directors that cats were allowed, the board called the previous manager to a meeting. He refused to attend or take directions so he was let go. If the board knew they would have definitely made him aware of a breach of the policies, but due to lack of communication, policies were not followed.

She also testified that about a year ago the president brought to the attention of the board of directors something about compassionate animals. Research was to be conducted, but the president never brought anything back to the board. At no other time was the board of directors asked or given any recommendation about pets except that a couple of tenants wanted to grandfather their cats. The witness does not recall how many board members were there at the time, about 5 including the witness, and it was totally unanimous that no cats would be grandfathered. She stated that the complex is a

non-profit organization on a limited budget and it was believed to be in the best interest of the complex if cats were not permitted.

The witness further testified that inspections to rental units had not been completed for quite some time and the witness assisted with going through checklists for inspections. Quite a few tenants had cats and the housing manager gave letters providing time to re-home the pets. All but 2 of the tenants re-homed their cats. The witness does not recall any tenants moving out due to the policy, although one moved out having already intended to move out prior.

The first tenant testified that she acquired her cat on July 2, 2012 after obtaining verbal permission from the property manager in the late spring of 2012. He advised that he had received permission from the board of directors and that the tenant had to provide proper documentation containing health records and shots for her tenancy file, and the tenant complied, advising the manager of that by text message on July 23, 2012. The tenant has had her cat now for 2 ½ years, and attempted to resolve this dispute with the board on 3 occasions and stated that the fair solution would be to allow the 2 tenants who still have cats to be “grandfathered” to the verbal authorization given in 2012.

The tenant described her cat as being her companion and a loving pet that helps calm her, and is like a family member. Since receiving notice about re-homing her pet, the tenant has made many attempts to settle, but the landlord has not responded to any letters or calls. The tenant is a student, and has been living in constant fear and anxiety for 5 months that she may have to give up her cat.

The tenant further testified that on May 12, 2014 the previous manager told the tenant that she may be evicted. The same day the tenant went to speak to the board members and voiced her concerns, anxiety and fear. She was assured that what the previous manager told her was not true and that the cat issue hadn't been discussed and never referred to any pet policy during the discussion. She stated that the members of the board said they wouldn't put cat owners on the street. Then on May 14, 2014 the tenant saw the notice from the landlord confirming that eviction was not a true rumor. The tenant again tried to settle this dispute by providing a letter dated May 29, 2014 to the acting director and the landlord's agent asking for authorization to keep the cats and stating that the tenant had been bullied, lied to, misled and misrepresented.

On August 21, 2014 the tenant personally went to see the executive director who stated that she doesn't normally meet with tenants and the issue of cats was out of her hands.

The second tenant testified that she acquired her cat on May 28, 2013 and had authorization to do so from the previous manager on the condition that health records were provided for the tenancy file.

The tenant met with board members on June 5, 2014 with another person also present, and has submitted a recording of that meeting by electronic means. The parties were unable to resolve the issue and then began looking for other reasons to evict the tenant, such as alleging repeated late rent, but refused to answer the tenant about the cat issue.

The tenant further testified that her cat is her companion and would not have brought the cat home if she had not obtained prior permission. The previous manager gave authorization upon conditions that were met and then sent a message to the tenant on May 13, 2014 stating that the board is going to decide about it soon, but the tenant had already acquired the cat a year prior.

The tenant has also provided a 4-page typewritten document setting out the dates of notices of entry for inspections, threats to evict the tenant immediately if the tenant didn't allow emergency repairs and other dialogue. The tenant also states that the landlord has disrupted her quiet enjoyment of the rental unit by consistent interruptions at home and at her place of employment ever since the issue of the cats was raised.

The tenants each seek \$1,500.00 in aggravated damages for loss of quiet enjoyment.

Analysis

It's clear in the evidence that cats were not permitted without permission of the landlord at the outset of both tenancies. However, it's also clear that the previous manager gave the tenants authorization and they acquired cats on good faith that they were permitted to do so. One of the tenants also testified that she would not have acquired the pet without the permission and both tenants testified that the condition to obtaining the pets was to ensure that proof of their health and shots was provided for the tenancy files, and they complied. I also find that the tenants had every reason to believe that the previous manager was acting on authority of the landlord. I find that the term in the tenancy agreement specified authorization was required, and to now, years later, invoke a clause that was changed by the manager cannot be construed as a breach of a material term of the tenancy, and I hereby cancel the notices to end tenancy issued to the tenants.

With respect to the tenants' application for a monetary order, the test for aggravated damages is a high one: I must be satisfied that the tenants suffered damages as a

result of the landlord's failure to comply with the *Act* or the tenancy agreement, the dollar value of the damages suffered, and what efforts the tenants made to mitigate damages suffered.

The tenants each claim the full amount of rent paid for the 5 month period that the tenants suffered anxiety and stress due to continued inspection notices, threats of eviction and such behaviours of the landlord's agents. I find that to be excessive considering the fact that the tenants had a roof over their head during that 5 month period.

I have reviewed the documentation provided by the tenants setting out time-lines of events. A landlord must provide a tenant with no less than 24 hours written notice to inspect a rental unit unless the tenant otherwise agrees. That notice must contain the date, time and reason for entering, which must be reasonable, and a landlord may inspect a rental unit monthly. In this case, the tenants didn't agree to entry for some of the repairs and advised the landlord's agents of that. Also, the inspections didn't take place more than monthly, and if so, only one extra time that I can see from the evidence. I find that the landlord has had a transition in staffing as well as on the board of directors, which has caused issues with the tenancies however in the circumstances I cannot find that the landlord has unreasonably harassed the tenants due to the cat situation. The tenants' applications for monetary orders are hereby dismissed and I order the landlord to comply with Sections 28 and 29 of the *Residential Tenancy Act*:

Protection of tenant's right to quiet enjoyment

28 A tenant is entitled to quiet enjoyment including, but not limited to, rights to the following:

- (a) reasonable privacy;
- (b) freedom from unreasonable disturbance;
- (c) exclusive possession of the rental unit subject only to the landlord's right to enter the rental unit in accordance with section 29 [*landlord's right to enter rental unit restricted*];
- (d) use of common areas for reasonable and lawful purposes, free from significant interference.

Landlord's right to enter rental unit restricted

29 (1) A landlord must not enter a rental unit that is subject to a tenancy agreement for any purpose unless one of the following applies:

- (a) the tenant gives permission at the time of the entry or not more than 30 days before the entry;

(b) at least 24 hours and not more than 30 days before the entry, the landlord gives the tenant written notice that includes the following information:

- (i) the purpose for entering, which must be reasonable;
- (ii) the date and the time of the entry, which must be between 8 a.m. and 9 p.m. unless the tenant otherwise agrees;
- (c) the landlord provides housekeeping or related services under the terms of a written tenancy agreement and the entry is for that purpose and in accordance with those terms;
- (d) the landlord has an order of the director authorizing the entry;
- (e) the tenant has abandoned the rental unit;
- (f) an emergency exists and the entry is necessary to protect life or property.

(2) A landlord may inspect a rental unit monthly in accordance with subsection (1) (b).

Conclusion

For the reasons set out above, the notices to end the tenancies in these disputes are hereby cancelled and the tenancies continue.

The tenants' applications for monetary orders for aggravated damages are hereby dismissed without leave to reapply.

I hereby order the landlord to comply with Sections 28 and 29 of the *Residential Tenancy 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*.

Dated: October 23, 2014

Residential Tenancy Branch

