



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC O

Introduction

This hearing was convened to hear matters pertaining to an Application for Dispute Resolution filed by the Tenant on October 29, 2015. The Tenant filed seeking an order to cancel a 1 Month Notice to end tenancy for cause and for other reasons.

The hearing was conducted via teleconference and was attended by the Landlord and the Tenant. Each person gave affirmed testimony. I explained how the hearing would proceed and the expectations for conduct during the hearing, in accordance with the Rules of Procedure. Each party was provided an opportunity to ask questions about the process; however, each declined and acknowledged that they understood how the conference would proceed.

The Landlord confirmed receipt of the Tenant's application for Dispute Resolution and hearing documents and asserted that they were not served within the required 3 days or in the required manner. He argued that the documents were sent via Express Post and did not require a signature so they were simply placed in his regular mailbox. The Landlord stated that despite the improper service he wished to expedite this process so he was prepared and willing to proceed with this hearing as scheduled.

On December 22, 2015 the Landlord submitted 12 pages of evidence to the Residential Tenancy Branch (RTB). The Landlord testified that he served copies of that evidence to the Tenant. The Tenant confirmed receipt of the Landlord's evidence and no issues with service or receipt was raised by the Tenant. As such I have considered the Landlord's documentary evidence for this proceeding.

No documentary evidence was submitted by the Tenant in support of her application for Dispute Resolution.

Both parties were provided with the opportunity to present relevant oral evidence, to ask relevant questions, and to make relevant submissions. Following is a summary of those submissions and includes only that which is relevant to the matters before me.

Issue(s) to be Decided

1. Should the 1 Month Notice issued October 22, 2015 be upheld or cancelled?
2. If upheld, did the Landlord make an oral request for an Order of Possession?

Background and Evidence

The Landlord submitted a copy of the tenancy agreement which indicates the parties entered into a written fixed term tenancy agreement that began on June 1, 2015 and switched to a month to month tenancy after May 31, 2015. Rent of \$1,250.00 was payable on or before the first of each month and the Tenant paid \$625.00 as the security deposit.

The Landlord testified that when he attended the rental unit on August 26, 2015 to personally serve the Tenant a 10 Day Notice for unpaid rent he was greeted by a dog. He argued that the tenancy agreement stipulates that pets were not allowed without his prior written permission so on August 28, 2015 his wife issued the Tenant a letter advising the Tenant of her breach of the tenancy agreement.

The Landlord submitted that a second letter was issued to the Tenant on September 11, 2015 which advised the Tenant that she was in breach of a material term of the tenancy agreement and that she had until September 30, 2015 to have all pets removed from the rental property. The Landlord stated that the Tenant was served that letter via registered mail and that he had confirmed that she had signed receipt for that letter.

The Landlord submitted a copy of the tenancy agreement into evidence. Item 1 of the tenancy agreement stipulates, in part, as follows:

The tenant and the co-tenant agree:

1. *not to keep any pets on the premises without first obtaining specific written permission (application to be filled out) from the owner.*

[Reproduced as written]

The Landlord asserted that he attempted to communicate with the Tenant via telephone, text messaging, and email; however, all of his communications and messages remained unanswered. On September 30, 2015 the Landlord had a friend knock on the rental unit door to verify if the dog was still at the unit. No one answered; however, a dog barked at the Landlord's friend which confirmed the dog was still in the rental unit. As a result, the Landlord issued the Tenant a 1 Month Notice to end tenancy for cause.

The Landlord stated that he had issued the Tenant a 72 hour notice of entry to conduct an inspection and requested the Tenant be present. The Tenant was not at the rental unit as requested, so he left the 1 Month Notice on her table.

The 1 Month Notice was issued pursuant to Section 47(1) of the Act listing an effective date of November 31, 2015 [sic] for the following reason(s):

- Breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.

The Tenant testified that she has a 4 pound Chihuahua dog and that she did not seek the Landlord's written permission to have a pet. She confirmed that the tenancy agreement provided in the Landlord's evidence was a copy of the agreement she had signed.

The Tenant submitted that the renter who occupied the rental unit prior to her had a cat. She asserted that the former tenant told her that she did not think the Landlord would have any problems with her dog. She argued that she did not know having her small dog would cause a problem as her previous landlord did not have any issues with her having a dog.

The Landlord stated that he was seeking to have the Tenant vacate the rental unit at the end of the month (January 31, 2016). He noted that rent had been paid in full and on time since issuing the Notice; however, the Tenant refused to communicate with him regarding her breaches of the tenancy agreement so he wanted to move forward with evicting her. Upon further clarification the Landlord confirmed that he was seeking an Order of Possession effective January 31, 2016.

Analysis

After careful consideration of the foregoing, documentary evidence, and on a balance of probabilities I find as follows:

62(3) of the Act stipulates that the director may make any order necessary to give effect to the rights, obligations and prohibitions under this Act, including an order that a landlord or tenant comply with this Act, the regulations or a tenancy agreement and an order that this Act applies.

Section 88(g) of the Act provides that a notice to end tenancy may be served by attaching a copy to a door or other conspicuous place at the address at which the person resides or, if the person is a landlord, at the address at which the person carries on business as a landlord.

Upon review of the 1 Month Notice to End Tenancy I find that it was served upon the Tenant in a manner that complies with section 88(g) of the Act, as it was left on the Tenant's table which is a conspicuous place at the address at which the person resides.

The effective date of the Notice was incorrectly written to be November 31, 2015. It is reasonable to conclude that the Landlord had intended to write the last day of November 2015 as being the effective date when he wrote 31. Therefore, I correct the effective date to be November 30, 2015, the last day of November, pursuant to section 62 of the Act.

Where a Notice to End Tenancy comes under dispute, the landlord has the burden to prove the tenancy should end for the reason(s) indicated on the Notice. The burden of

proof is based on the balance of probabilities, meaning the events as described by one party are more likely than not.

Section 47(h) of the *Act* provides that a landlord may give a tenant notice to end the tenancy if the tenant has failed to comply with a material term, and has not corrected the situation within a reasonable time after the landlord gives written notice to do so.

Based on the undisputed evidence that the Tenant has a dog and did not seek the Landlord's written permission to have a pet, as required by the tenancy agreement, I find the Landlord has satisfied me that the Tenant has breached a material term of the tenancy agreement. I further find that the Tenant failed to correct the situation by removing all pets by September 30, 2015 as stipulated in the Landlord's second warning letter.

Based on the above I find the Landlord submitted sufficient evidence to uphold the 1 Month Notice to end tenancy issued October 22, 2015, pursuant to section 47(h) of the *Act*. Accordingly, I dismissed the Tenant's application to cancel that 1 Month Notice.

With respect to the Landlord's oral request for an Order of Possession, section 55 of the *Act* provides that an Order of Possession shall be granted to a landlord where:

- The tenant files to cancel a notice to End Tenancy and the application is dismissed; and,
- The landlord orally requests an Order of Possession during the scheduled hearing.

I find the above criteria have been met and I grant the Landlord's request for an Order of Possession effective January 31, 2016.

Conclusion

The Tenant's application to cancel the 1 Month Notice was dismissed and the 1 Month Notice was upheld. The Landlord's request for an Order of Possession effective January 31, 2016 was granted.

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: January 05, 2016

Residential Tenancy Branch

