



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Red Door Housing Society
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes: OPC / FF; CNC

Introduction

This hearing concerns 2 applications:

- i) by the landlord for an order of possession for cause / and recovery of the filing fee; and
- ii) by the tenant for cancellation of a notice to end tenancy for cause.

Both parties attended and gave affirmed testimony.

Issue(s) to be Decided

Whether either party is entitled to the above under the Act, Regulation or tenancy agreement.

Background and Evidence

The unit which is the subject of this dispute is 1 of what are a total of approximately 32 units located within a 3 storey townhouse complex. Pursuant to a written tenancy agreement the tenancy began on July 18, 2008. Monthly rent is due and payable in advance on the first day of each month. The tenant's portion of monthly rent is currently \$510.00, or \$535.00 with utilities. A security deposit of \$670.00 was collected.

In summary, the dispute concerns whether or not the tenant has breached a material term of the tenancy agreement by acquiring certain pets without the landlord's permission, and on such a basis whether the landlord has established entitlement to an order of possession. Where it concerns pets, clause # 25 of the tenancy agreement provides as follows:

25 Pets

- a. **Dogs, Cats, Ferrets, Rabbits, and Other Uncaged Animals are not allowed.**
Tenants may, with Landlord's written consent, have caged birds, hamsters,

gerbils, guinea pigs, fish, turtles, and other such small animals as agreed by the Landlord. Written consent must be obtained **before** the pet is obtained. There is a written Pet Policy which must be followed. This policy sets a limit on the number of pets, the conditions under which they may be kept and a clause regarding the disturbance of neighbours. The above pets are permitted after the payment of a **Pet Damage Deposit**, which will not exceed one half of the monthly Rent.

At the time when this tenancy began, it is understood that the tenant had no pets whatsoever. Accordingly, at clause # 4 on the tenancy agreement adjacent to the heading - Pet Damage Deposit, there is a manual notation: "no pets."

By letter to the tenant dated July 27, 2015, the landlord informed the tenant that the landlord had "decided to allow pets...as of today on." In association with the landlord's new policy, in this letter the landlord set out certain requirements, as follows:

- You will have to sign a new rental agreement that allows pets
- You will have to complete the Pet Registration / Approval form with a photo of your pet
- You will have to read, sign and abide by the Pet Ownership Rules
- We will require you to pay a Pet Deposit of \$525.00 (this will be returned upon move out and a satisfactory condition inspection)

The deadline identified in this letter for complying with the above requirements was August 20, 2015.

The tenant responded to the above letter by way of her own letter dated November 26, 201[5]. In short, the tenant took issue with the landlord's requirements and referred to what she considered were applicable sections of the Act and the Residential Tenancy Policy Guidelines.

Thereafter, the landlord corresponded with the tenant by letter dated December 16, 2015, stating in part:

You have acquired a number of pets during your tenancy in direct violation of your signed rental agreement as you have not obtained written permission for any of them. This is a material term of your current rental agreement.

Please find enclosed, a new rental agreement that will allow ONE pet, a Pet Registration form for you to complete in full, a copy of the Pet Ownership Rules / Regulations which you are required to read, sign and abide and we will require a pet damage deposit of \$525.50 from you in order to continue having either your cat or your small dog reside in your unit with you.

The new deadline identified in this letter for compliance with the landlord's requirements was January 04, 2016.

Subsequently, the landlord corresponded with the tenant by letter dated January 05, 2016, reiterating the requirements set out in the earlier letter of December 16, 2015, and stating in part:

The following is a requirement in order for you to continue having ONE pet in your unit. Failure to do so will mean you cannot keep any pet, you will have to re-home your cat, dog and snake and a Notice to End Tenancy will be issued as you are keeping pets in breach of your current rental agreement without permission.

The new deadline identified in this letter for complying with the landlord's requirements was January 26, 2016. In this letter, the landlord also stated, in part:

....You will also be required to provide proof that you have found an alternate home for two of your three pets as we will only allow you to keep either your dog or your cat, but not both and we do not allow large snakes.

If these requirements are not met in full, a One Month Notice to End Tenancy will be given as you are currently in breach of a material term of your signed Rental Agreement.

Following all of the above, by letter dated January 28, 2016, the landlord set out a summary of the landlord's attempts to resolve the dispute around pets, and concluded that the tenant had "not met our requirements in order to continue having your pet reside on the premises." Accordingly, enclosed with the landlord's letter was a 1 month notice to end tenancy for cause.

Pursuant to section 47 of the Act which addresses **Landlord's notice: cause**, the landlord issued a 1 month notice to end tenancy dated January 28, 2016. The notice was served by way of enclosure with the landlord's letter of the same date. A copy of the notice was submitted in evidence. The date shown by when the tenant must vacate the unit is February 29, 2016, with the reason identified in support of its issuance as:

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 filed an application to dispute the notice on February 03, 2016. During the hearing the tenant claimed that she obtained a cat in February 2014, and later that same year, a dog and a snake. The tenant described the importance of being able to continue to own her dog and her cat. She also claims that the landlord was aware of her ownership of a dog, but

ownership of pets did not become a particular issue of concern until such time as the landlord formally changed its policy in regard to pet ownership. Further, the tenant testified that she was willing to attempt to work out an installment payment plan for the pet damage deposit required by the landlord.

The landlord's application for dispute resolution was filed on February 11, 2016. During the hearing the notion of "grandfathering" ownership of pet(s) was raised, however, the landlord expressed concern that making exceptions for one tenant, would almost certainly lead to other tenants expecting similar treatment.

Analysis

At the outset, the attention of the parties is drawn to various sections of the Act and the Residential Tenancy Policy Guidelines, which broadly relate to the nature of the dispute.

Section 14 of the Act addresses **Changes to tenancy agreement**:

14(1) A tenancy agreement may not be amended to change or remove a standard term.

(2) A tenancy agreement may be amended to add, remove or change a term, other than a standard term, only if both the landlord and tenant agree to the amendment.

(3) The requirement for agreement under subsection (2) does not apply to any of the following:

- (a) a rent increase in accordance with Part 3 of this Act;
- (b) a withdrawal of, or a restriction on, a service or facility in accordance with section 27 *[terminating or restricting services or facilities]*;
- (c) a term in respect of which a landlord or tenant has obtained an order of the director that the agreement of the other is not required.

Further, section 18 of the Act addresses **Terms respecting pets and pet damage deposits**:

18(1) A tenancy agreement may include terms or conditions doing either or both of the following:

- (a) prohibiting pets, or restricting the size, kind or number of pets a tenant may keep on the residential property;
- (b) governing a tenant's obligations in respect of keeping a pet on the residential property.

(2) If, after January 1, 2004, a landlord permits a tenant to keep a pet on the residential property, the landlord may require the tenant to pay a pet damage deposit in accordance with sections 19 *[limits on amount of deposits]* and 20 *[landlord prohibitions respecting deposits]*.

(3) This section is subject to the rights and restrictions under the *Guide Animal Act*.

Section 19 of the Act addresses **Limits on amount of deposits**, and provides in part:

19(1) A landlord must not require or accept either a security deposit or a pet damage deposit that is greater than the equivalent of $\frac{1}{2}$ of one month's rent payable under the tenancy agreement.

Section 20 of the Act addresses **Landlord prohibitions respecting deposits**, in part:

20 A landlord must not do any of the following:

- (c) require a pet damage deposit at any time other than
 - (i) when the landlord and tenant enter into the tenancy agreement, or
 - (ii) if the tenant acquires a pet during the term of a tenancy agreement, when the landlord agrees that the tenant may keep the pet on the residential property;
- (d) require or accept more than one pet damage deposit in respect of a tenancy agreement, irrespective of the number of pets the landlord agrees the tenant may keep on the residential property;

Section 47 of the Act (**Landlord's notice: cause**) provides in part:

47(1) A landlord may end a tenancy by giving notice to end the tenancy if one or more of the following applies:

- (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;

Residential Tenancy Policy Guideline # 8 speaks to "Unconscionable and Material Terms:"

Material Terms

A material term is a term that the parties both agree is so important that the most trivial breach of that term gives the other party the right to end the agreement.

To determine the materiality of a term during a dispute resolution hearing, the Residential Tenancy Branch will focus upon the importance of the term in the overall scheme of the tenancy agreement, as opposed to the consequences of the breach. It falls to the person relying on the term to present evidence and argument supporting the proposition that the term was a material term.

The question of whether or not a term is material is determined by the facts and circumstances surrounding the creation of the tenancy agreement in question. It is possible that the same term may be material in one agreement and not material in another. Simply because the parties have put in the agreement that one or more terms are material is not decisive. During a dispute resolution proceeding, the Residential Tenancy Branch will look at the true intention of the parties in determining whether or not the clause is material.

To end a tenancy agreement for breach of a material term the party alleging a breach – whether landlord or tenant – must inform the other party in writing:

- that there is a problem;
- that they believe the problem is a breach of a material term of the tenancy agreement;
- that the problem must be fixed by a deadline included in the letter, and that the deadline be reasonable; and
- that if the problem is not fixed by the deadline, the party will end the tenancy.

Where a party gives written notice ending a tenancy agreement on the basis that the other has breached a material term of the tenancy agreement, and a dispute arises as a result of this action, the party alleging the breach bears the burden of proof. A party might not be found in breach of a material term if unaware of the problem.

Based on the documentary evidence and testimony of the parties, I find there is no specific provision in the subject tenancy agreement which makes reference to the pets clause as a “material term” of the agreement. Further, I find that the landlord has failed to meet the burden of proving that the pets clause is a “material term” of the agreement, such that a breach of that term leads reasonably to issuance of a notice to end tenancy for cause. I note that the landlord made a significant change from its original position concerning pet ownership toward a more flexible position. Specifically, where certain pets were previously prohibited, ownership of a dog or a cat is now permitted.

I find that the landlord's concern about how a flexible / graduated application of the pets policy for one tenant may be problematic in managing the expectations of other tenants, precludes careful consideration of individual circumstances, and exploration of possible solutions which could in time lead to full compliance with the landlord's new policy.

Going forward, the parties are encouraged to explore a resolution of the dispute between them. In the event that such a resolution is not achieved, the attention of the parties is drawn to section 6 of the Act, which addresses **Enforcing rights and obligations of landlords and tenants**, in part:

6(1) The rights, obligations and prohibitions established under this Act are enforceable between a landlord and tenant under a tenancy agreement.

(2) A landlord or tenant may make an application for dispute resolution if the landlord and tenant cannot resolve a dispute referred to in section 58(1) [*determining disputes*].

Finally, the attention of the parties is drawn to section 62 of the Act which addresses **Director's authority respecting dispute resolution proceedings**, in part:

62(3) The director may make an 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.

Conclusion

The landlord's notice to end tenancy is hereby set aside, with the result that the tenancy presently continues in full force and effect. The landlord's application for recovery of the filing fee is also hereby set aside.

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: March 22, 2016

Residential Tenancy Branch

