Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Bantview Gardens
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC, ERP, LRE, MNDC, MNSD, OLC, PSF, RP

Introduction

This hearing dealt with an application by the tenant for orders settings aside a 1 Month Notice to End Tenancy for Cause; compelling the landlord to comply with the Act, regulation or tenancy agreement; compelling the landlord to make repairs and to provide services or facilities agreed upon but not provided; limiting the landlord's right of entry; and granting a monetary order in favour of the tenant including the return of the security deposit and pet damage deposit. Both parties appeared. No issues regarding the exchange of evidence were identified.

The tenant had not set out the landlords' names correctly on the Application for Dispute Resolution. With the consent of all parties the application was amended to correct that error. The correct names of the landlords are set out on this decision and order.

The effective date of the notice to end tenancy was incorrect. I explained to the parties that the effective date of a notice issued in August is September 30 and that the date was automatically corrected by law.

After I explained the law relative to the landlord's right of entry the tenant advised that the application for an order limiting the landlord's right of entry was not necessary.

As part of her claim for a monetary order the tenant included moving expenses. I explained that if I granted her application the tenancy would be continuing and there would not be any moving expenses and, if I dismissed it, the tenant would be ending for cause, in which case she was not entitled to moving expenses.

Issue(s) to be Decided

- Does the landlord have cause, within the meaning of the *Residential Tenancy Act*, to end this tenancy?
- Should a repair order be made and, if so, on what terms?
- Should any other order be made against the landlords and, if so, on what terms?

- Should a monetary order be made in favour of the tenant and, if so, in what amount?
- What order should be made regarding the security deposit and pet damage deposit?

Background and Evidence

This month-to-month tenancy formally began on November 15, 2015 although the tenant moved into the unit a few days early. The monthly rent of $880.00 is due on or before the first day of the month. The tenant paid a security deposit of $440.00. The tenant is responsible for the hydro.

The parties signed a tenancy agreement. The landlord testified that she was new in her job and did not realize she was supposed to give a copy to the tenant. The tenant acknowledged that the signature on the copy of the tenancy agreement included in the landlords' evidence package was hers.

The tenancy agreement states that no pets are allowed. Although the landlords' form provides for this paragraph to be initialled by the tenant, it was not. The landlord testified that when the tenant applied for tenancy she explained to the tenant that although some residents of the building had dogs, the policy had changed and pets were no longer being accepted. She explained that tenants who were already in the building were able to keep their pets because they were "grandfathered". The tenant said she understood. The landlord asked the tenant if she had a dog and she said no.

The tenant testified that when she applied for tenancy she disclosed that she had a small dog. She did recall the landlord talking about "grandfathered" pets.

A copy of the application for tenancy was not submitted into evidence by either party.

In January the landlord realized the tenant had a small dog in her unit. The landlord and the tenant agreed that the dog could stay but the tenant had to pay a pet damage deposit. They agreed upon $200.00, to be paid in installments.

In a letter dated April 27, 2016, the landlord advised the tenant that:

> "This letter is to inform you that you are required to pay the Pet Deposit on your dog . . .I have brought this to your attention before but this is the first letter you are receiving to submit payment of the pet deposit. It is currently $425.00 and if refundable at the end of your tenancy providing there is no damage done."

On April 29 the tenant met with the landlord and asked her to provide an accounting of all money the owed. Included in the list provided by the landlord, and agreed to by the tenant, was the pet deposit of $200.00. At the beginning of May the tenant paid $50.00 towards the deposit.

The landlord provides the tenant with a written receipt for each payment. On the rent receipts for June, July and August there is a notation that $150.00 was still due for the pet damage deposit.

The tenant testified that she received many verbal reminders from the landlord about the pet damage deposit. She always promised to pay it. The tenant testified that their conversations were just reminders, not threats, and she did not understand that there any urgency to paying the deposit.

On August 5, 2016, the landlord issued and served a 1 Month Notice to End Tenancy for Cause. One of the reasons given on the notice was that the "security or pet damage deposit was not paid within 30 days as required by the tenancy agreement."

Analysis

The *Residential Tenancy Act* allows a landlord to collect a pet damage deposit equal to a half month's rent, in one lump sum payment. This amount may be collected at the start of the tenancy or when the tenant brings a pet into the rental unit. I find that the tenant did not disclose that she had a pet at the start of the tenancy based upon the following facts: the tenancy agreement says pets are not allowed and the landlord did not ask for a pet damage deposit at the start of the tenancy.

I find that the tenancy agreement was altered in January when the landlord agreed that the tenant could have her dog in the rental unit. At that time the parties agreed that the tenant would pay a reduced pet damage deposit of $200.00. The landlord also agreed that the deposit could be paid in installments. Both of these measures were a significant accommodation to the tenant's personal circumstances.

The tenant made the first and only installment payment in May, five months later and only after receiving a written demand for payment. Despite receiving repeated reminders that the pet damage deposit was unpaid, the tenant never paid another cent.

Had the tenant made some payments between May and August she might have been able to argue that the January agreement did not include a fixed payment schedule and she was complying with the agreement by making payments, however irregular they

may have been. However, in this case, the tenant simply ignored the landlord's request for payment.

Section 47(1)(a) allows a landlord to end a tenancy if the tenant does not pay the security deposit or pet damage deposit within 30 days of the date it is required to be paid under the tenancy agreement.

The pet deposit was due within thirty days of the demand letter of April 27. The tenant did not pay the pet damage deposit that was required by the tenancy agreement. The landlords have established one of the causes stated on the notice for ending the tenancy. Accordingly, the tenant's application for an order setting aside the 1 Month Notice to End Tenancy for Cause is dismissed. The tenancy is ended as of September 30, 2016.

Section 55(1) of the *Residential Tenancy Act* provides that if a tenant makes an application to set aside a landlord's notice to end a tenancy and:

- the notice to end tenancy complies with section 52; and,
- the application is dismissed or the notice to end tenancy is upheld;

the arbitrator must grant an order of possession of the rental unit to the landlord.

In this case the tenant's application has been dismissed and the notice to end tenancy complies with section 52, therefore, I grant the landlord an order of possession effective two days after service. If the October rent has been accepted by the landlord, the order cannot be enforced until October 31, 2016.

Both parties gave evidence related to the other causes for ending the tenancy stated on the notice and the tenant's claim for compensation for harassment. In particular the tenant submitted a recording of an incident on August 4, 2016. The quality of the recording was very poor and was no substitute for the sworn testimony of the parties. Certainly it was as unpleasant event. The landlord also gave evidence of unpleasant encounters between the tenant and themselves, and between the tenant and other tenants.

Because the tenancy is being ended for non-payment of the pet damage deposit it is not necessary to make a finding on whether the landlord had established that the tenant's behaviour was grounds for ending the tenancy.

With regard to the tenant's claim for compensation for harassment as explained in *Residential Tenancy Policy Guideline 6: Right to Quiet Enjoyment* harassment may be

defined as “engaging in a course of vexatious comment or conduct that is know or ought reasonable to be known to be unwelcome”. One unpleasant incident is not a “course of conduct”. The evidence about other disputes between the landlord and the tenant appear to be related to the landlord’s efforts to enforce the rules of the building or the terms of the tenancy agreement, which is not harassment. The tenant’s claim for compensation or harassment is dismissed.

Even if the tenant had established a claim for harassment, that would not negate a 1 Month Notice to End Tenancy for Cause based upon non-payment of the security deposit or pet damage deposit within the time required to do so.

As the tenancy is ending the claims for repair order, the provision of services or facilities, and other orders against the landlords are no longer relevant.

The tenant’s claim for return of the security deposit and pet damage deposit was filed prematurely. These claims may only be made after the tenant has vacated the rental unit and should be made in accordance with section 38.

Conclusion

The tenant’s application for an order setting aside a 1 Month Notice to End Tenancy for Cause is dismissed. In accordance with section 55 the landlords are granted an order of possession effective two days after service. If necessary, this order may be filed in the Supreme Court and enforced as an order of that court.

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 4, 2016

Residential Tenancy Branch