



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding SOCIETY OF HOUSING OPPORTUNITIES AND PROGRESSIVE
EMPLOYMENT
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC FF

Introduction

This hearing was convened as a result of the Tenant's Application for Dispute Resolution, made on August 2, 2018 (the "Application"). The Tenant applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

- an order cancelling a One Month Notice to End Tenancy for Cause, dated July 25, 2018 (the "One Month Notice"); and
- an order granting recovery of the filing fee.

The Tenant attended the hearing in person. The Landlord was represented at the hearing by M.C. and W.P., property managers. The Tenant, M.C. and W.P. provided affirmed testimony.

The Tenant testified the Application package as served on the Landlord by Priority Post on August 5, 2018. M.C. acknowledged receipt on behalf of the Landlord. In addition, M.C. testified the Landlord's documentary evidence was served on the Tenant by Xpress Post on September 10, 2018. The Tenant confirmed receipt. No issues were raised during the hearing with respect to service or receipt of the above documents. Pursuant to section 71 of the *Act*, I find these above documents were sufficiently served for the purposes of the *Act*.

The parties were given an opportunity to present evidence orally and in written and documentary form, and to make submissions to me. I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Preliminary and Procedural Matters

Pursuant to section 64 of the *Act*, and with the agreement of the parties, I amend the Tenant's Application to reflect the full organizational name of the Landlord.

Issues to be Decided

1. Is the Tenant entitled to an order cancelling the One Month Notice?
2. Is the Tenant entitled to recover the filing fee?

Background and Evidence

The parties agreed the tenancy began on November 1, 2009. Market rent is currently \$1,490.00, but the Tenant pays the subsidized rate of \$504.00 per month. The Tenant paid a security deposit of \$481.50, which the Landlord holds.

The Landlord wishes to end the tenancy. Accordingly, the Landlord issued the One Month Notice on the basis that the Tenant breached a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so. According to M.C., the One Month Notice was posted to the door of the Tenant's rental unit on July 25, 2018. A Proof of Service document was submitted in support. The Tenant acknowledged receipt of the One Month Notice on July 26, 2018.

The Landlord testified the Tenant has breached material terms of the tenancy agreement. First, the Tenant has stored garbage and other belongings outside the rental unit, contrary to paragraph 19 of the tenancy agreement, which states:

Storage. All property of the Tenant stored on the premises, shall be kept in safe condition on proper storage areas and shall be at the Tenants risk of loss, theft or damage from any cause whatsoever. No hazardous items shall be stored or kept on the premises. Carports, balconies, or patios are not to be used for storage of property or goods.

[Reproduced as written.]

In support, the Landlord submitted letters to the Tenant dated March 22, June 1, November 8, and November 30, 2016. The letter dated November 30, 2016, confirmed a conversation between M.C. and the Tenant, during which the Tenant agreed to comply with the terms of the tenancy agreement and rules/regulations.

In addition, the Landlord submitted black and white photographic images depicting garbage, cardboard boxes, and electronics in support of the Landlord's claim. M.C. testified that more recently, garbage bags containing cat litter and feces, and other garbage, have leaked onto the carport, causing staining and odours.

In reply, the Tenant did not dispute that the belongings were stored outside. However, the Tenant stated the items were kept in those locations for short periods before being placed in the garbage or donated. The Tenant suggested staining has been an issue since the tenancy began.

Second, M.C. testified the Tenant has maintained a cat in the rental unit, contrary to paragraph 17 of the tenancy agreement, which states:

No pets. Cats, dogs, rabbits and ferrets are not approved pets. No animals or pets of any kind shall be kept or sheltered on the premises and no animals or birds shall be fed on the premises, with the exception of approved pets: caged birds, gerbils, and reptiles up to 14" in length, aquariums up to 20 liters. More than three approved pets are not allowed. Unapproved pets are not permitted on the property at any time for any reason.

[Reproduced as written.]

On behalf of the Landlord, M.C. testified the Tenant has kept a cat in the premises and submitted a photograph in support.

In reply, the Tenant testified the cat was there temporarily while a family member was in hospital but that the cat is no longer in the rental unit.

Analysis

Based on the documentary evidence and oral testimony provided during the hearing, and on a balance of probabilities, I find:

Section 47 of the *Act* permits a Landlord to take steps to end a tenancy for cause in the circumstances described therein. In this case, the Landlord wishes to end the tenancy on the basis that the Tenant has breached a material term of the tenancy agreement.

Policy Guideline #8 provides guidance when determining whether or not a term in a tenancy agreement is a material term. It states:

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 agreement², 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.

[Reproduced as written.]

In this case, I accept the Landlord's evidence that the Tenant has violated the storage and pet provisions of the tenancy agreement. However, I find there is insufficient evidence before me to conclude the terms relied upon were material terms as contemplated under Policy Guideline #8. The terms do not appear to be paramount in the overall scheme of the tenancy agreement. For example, I note the Landlord permits some pets in the rental units but not others. Further, I find it is significant that the Landlord took no steps to end the tenancy after the warnings issued in 2016.

In light of my findings above, I order that the One Month Notice is cancelled. The Tenancy will continue until otherwise ended in accordance with the *Act*.

Having been successful, I find the Tenant is entitled to recover the filing fee paid to make the Application. I order that the Tenant may deduct \$100.00 from a future rent payment at her discretion.

However, I order the Tenant to comply with the tenancy agreement generally, and paragraphs 17 and 19 specifically. Failure to do so may result in the Landlord issuing a new notice to end tenancy for cause and the end of the tenancy.

Conclusion

I order that the One Month Notice is cancelled. The Tenancy will continue until otherwise ended in accordance with the *Act*.

I find the Tenant is entitled to recover the filing fee paid to make the Application. I order that the Tenant may deduct \$100.00 from a future rent payment at her discretion.

I order the Tenant to comply with the tenancy agreement generally, and paragraphs 17 and 19 of the tenancy agreement specifically. Failure to do so may result in the Landlord issuing a new notice to end tenancy for cause, and the end of the tenancy.

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: September 21, 2018

Residential Tenancy Branch