Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding EMV Holdings Corp.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes **FFT, CNC**

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the "*Act*") for:

- Authorization to recover the filing fees from the landlord pursuant to section 72; and
- An order to cancel a One Month Notice to End Tenancy for Cause ("Notice") pursuant to section 47.

The tenant attended the hearing and the landlord was represented at the hearing by counsel, KN. The landlord's property manager MV ("landlord") also attended and provided evidence. As both parties were present service of documents was confirmed. The landlord acknowledged receipt of the tenant's Notice of Dispute Resolution Proceedings package and stated there were no concerns with timely service of documents. The landlord testified she served the tenant with her evidence by registered mail on March 5, 2020 and the tracking number for the service is listed on the cover page of this decision. During the hearing, the tenant retrieved the landlord's evidence package from a common mail area in the building and acknowledged she had it. The tenant stated she wanted the hearing to proceed despite receiving the landlords evidence late.

Preliminary Matters

Section 63 of the *Act* allows an Arbitrator to assist the parties settle their dispute and record the settlement in the form of a decision and order if the parties settle their dispute during the dispute resolution proceeding. Accordingly, I attempted to assist the parties to resolve this dispute by helping them negotiate terms of a settlement. The parties could not reach consensus on the terms of a settlement; therefore, I heard testimony, considered the evidence, and issued a decision to resolve this dispute.

Issue(s) to be Decided

Should the landlord's Notice to End Tenancy be upheld or cancelled?
Should the filing fee be recovered by the tenant?

Background and Evidence

At the commencement of the hearing, pursuant to rules 3.6 and 7.4, I advised the parties that in my decision, I would refer to specific documents presented to me during testimony. While I have turned my mind to all the documentary evidence, including photographs, diagrams, miscellaneous letters and e-mails, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of each of the parties' respective positions have been recorded and will be addressed in this decision.

A copy of the tenancy agreement was provided as evidence. This tenancy began on October 1, 2012 as a one year fixed term, becoming month to month at the end of the first year. Rent was set at $960.00 per month and a security deposit of $480.00 was collected by the landlord which the landlord continues to hold. No pet damage deposit was taken, and the pet deposit spot was crossed off on the tenancy agreement. The landlord points out clause 18 in the standard tenancy agreement which states:

> **PETS.** Unless specifically permitted in writing in advance by the landlord, the tenant must not keep or allow on the residential property any animal, including a dog, cat, reptile, or exotic animal, domestic or wild, fur bearing or otherwise. Where the landlord has given his permission in advance in writing, the tenant must ensure that the pet does not disturb any person in the residential property or neighbouring property, and further the tenant must ensure that no damage occurs to the rental unit or residential property as a result of having or keeping the pet. This is a material term of this Agreement. If any damage occurs caused by the pet, the tenant will be liable for such damage and will compensate the landlord tor damages, expenses, legal fees, and/or any reasonable costs incurred by the landlord. Further, if the landlord gives notice to the tenant to correct any breach and the tenant fails to comply within a reasonable time, the landlord has a right to end the tenancy along with making the appropriate claims against the tenant. Having regard to the potential safety issues, noise factors, health requirements, and mess, the tenant will not encourage or feed wild birds or animals at or near the residential property.

Further noted by the landlord is clause 5 of the signed addendum to the tenancy agreement which reads:

> We do not allow Pets in the building or any other exotic animals, birds, snakes or reptiles. Gas barbecues are conditionally allowed.

The landlord's witness, CS testified that she worked as an onsite building manager commencing the last week in May, 2016 while the tenant was already living there. In approximately July of 2016, while in the tenant's unit to deal with a fridge issue, she saw a cat and assumed the previous building manager allowed it. She was aware that some tenants had cats and had assumed this tenant's cat was one that had been 'grandfathered' in. She never had a conversation with this tenant about the cat or any other animal in the tenant's unit and was unaware the tenant had taken in any guinea pigs while she was building manager. She specifically denies providing permission to the tenant to have animals during the course of her time as a building manager. The only tenant who sought permission to have an animal was the owner of a small dog and this was allowed after paying an additional pet damage deposit. The landlord provided a written statement from CS that mirrors the testimony of the witness CS and referred to it during the hearing.

In cross examination, the witness stated that her definition of grandfathered means a permission granted prior to her becoming building manager. She testified that people bring animals into their rental units all the time and *'say'* they have permission when they do not. These tenants are required to remove the animals. Records of verbal permissions to have animals aren't regularly kept, though they try to document them.

The current building manager MV ("landlord") provided the following testimony. She became manager in August 2019. She first went into the tenant's unit in October 2019 during an annual inspection. She was advised about the tenant's cat which she and the previous manager thought were 'grandfathered' by an earlier manager but she was unaware of the guinea pigs until she heard them in the tenant's unit. On October 16th, the landlord sent the tenant a letter advising that it has come to their attention the tenant had guinea pigs. The landlord advised that they considered this to be a violation of clause 18 of the tenancy agreement and that this was a breach of a material term of the tenancy. This letter was followed up by a further letter dated October 21st from the landlord asking what the tenant's plans are regarding the guinea pigs contrary to the tenancy agreement. On October 25th, the tenant wrote a response advising she was unaware of the pet clause in her tenancy agreement and advises she would welcome an inspection of her unit to show they do not cause problems.

This letter was responded to by the landlord's general manager who on November 6th reiterated that the cat is grandfathered however the guinea pigs are unauthorized, and they must be removed by December 1, 2019. After more correspondences between the parties, on December 13th, the landlord gave the tenant a further warning to have both her cat and guinea pigs removed by January 3, 2020. Failure to comply with this request will result in being served with a One Month Notice To End Tenancy for Cause. On January 7th the landlord served the tenant with the said Notice by posting it to the tenant's door.

A copy of the Notice was provided as evidence. The reasons for ending the tenancy were as follows:

- *the tenant or a person permitted on the property by the tenant has engaged in illegal activity that has, or is likely to jeopardize a lawful right or interest of another occupant or the landlord;*
- *breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so;*

The details of cause read:

- *The tenant obtained pets twice without the landlord's permission in advance. She has not removed them neither within reasonable time nor after written notice to do so.*

During the hearing, the landlord acknowledged there was no illegal activity and that the only reason for ending the tenancy is the breach of the material term of the tenancy. The landlord submits that the tenant agreed to all of the terms of the tenancy agreement when she signed it, including clause 18 in the tenancy agreement and clause 5 of the addendum. There should be no confusion about whether this is a material term or about whether the tenant is permitted to have pets. The landlord has complied with the Act in providing the tenant with written notice to correct the breach. The landlord's main concern with the guinea pigs is the hay that the guinea pigs use for bedding.

The tenant provided the following testimony. There are many tenants living in the building with pets. The landlord's witness, the previous building manager lied when she said she only allowed a single tenant to have a pet. She would have called another tenant as a witness, however that witness was reluctant to testify for fear of 'backlash' from the landlord. That same former building manager was aware she had a cat and had no issue with it. The landlord is not consistent in allowing some tenants to have animals and restricting others. It appears the rules change when the building managers

change. The previous building manager was good and ‘allowed pets’ however the current building manager has different ideas.

The guinea pigs she keeps do not run around. They are always kept in a cage. The tenant has talked to the previous building manager about the guinea pigs and testified the previous building manager saw the cage the tenant had ordered from Amazon when it arrived.

In correspondences with the landlord, the tenant contends that there are several animals in the building including dogs, cats and birds – leading her to be confused by the clause that states ‘we do not allow pets in the building’.

Analysis

Pet clauses are examined extensively in Residential Tenancy Policy Guideline PG-28.

When a landlord feels that a tenant is breaching a pets clause by having an animal on the premises, it is not uncommon for the landlord to give the tenant a written notice to get rid of the pet. If the tenant fails to do so within a reasonable time, the landlord might give the tenant a notice to end the tenancy claiming that the tenant has breached a material term of the tenancy agreement and failed to rectify the breach within a reasonable time after being given written notice to do so.

…

If a tenant chooses to dispute the landlord's notice to end the tenancy or opposes the landlord's application to comply, the matter will come before an arbitrator who will determine, in the case of a notice to end the tenancy, whether the pets clause in the tenancy agreement is a "material term" of the tenancy agreement. In the case of an application for an order that the tenant comply with the tenancy agreement, the arbitrator will determine whether the pets clause is an enforceable term of the tenancy agreement. In making that determination, an arbitrator will be governed by ***three factors****: that the term is not inconsistent with the Residential Tenancy Act, the Manufactured Home Park Tenancy Act, or their respective Regulations, that the term is not unconscionable, and that the term is expressed in a manner that clearly communicates the rights and obligations under it.*

1. **Is the term inconsistent with the *Residential Tenancy Act*?**

Section 18(1)(a) of the *Act* says that 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.

I have examined clause 18 of the tenancy agreement and find that it closely mirrors section 18 of the Act. It provides for exceptions to the clause in that the landlord may give permission "in advance in writing". In this case however, the tenant obtained the guinea pigs without permission from the landlord in writing or otherwise. Although the tenant argues that the previous building manager was 'aware' of the guinea pigs, on a balance of probabilities, I find the evidence does not support this argument.

2. **Is the term unconscionable?**

To be an unconscionable term, the tenant must be able to show that the term is oppressive or grossly unfair. It must be so one-sided as to oppress or unfairly surprise the other party. To be unconscionable, the term must take advantage of the ignorance, need or distress of the weaker party.

In his correspondence with the tenant dated November 6th, the General Manager of the landlord's company appears to acknowledge the tenant's cat is considered grandfathered. I understand from the testimony of the parties that this means that the tenant's cat would be permitted to remain. As such, I find that the landlord's stance is not oppressive or grossly unfair. In determining the tenant's capacity to enter into the tenancy agreement, I find the tenant to be articulate, thoughtful and knowledgeable, possessing an advanced education and recent degrees. Although she may have been unaware of the pet restriction clauses in the tenancy agreement and addendum or may have forgotten them when acquiring the guinea pigs; I find she was given the opportunity to comply with the terms of the tenancy agreement but made the choice not to do so. The term is not unconscionable.

3. **Is the term expressed in a manner that clearly communicates the rights and obligations under it?**

In correspondences sent from the tenant, she told the landlord that she is confused by the addendum clause 6 stating: *We do not allow Pets in the building or any other exotic animals, birds, snakes or reptiles* while there are clearly pets in the building. I note however that clause 18 of the tenancy agreement states there are to be no pets: *Unless specifically permitted in writing in advance by the landlord.* Given this, the tenant has not provided sufficient evidence to satisfy me that the other tenants in the building who have pets are violating their tenancy agreements by not having prior permission. I find

both clause 18 of the tenancy agreement and clause 6 of the addendum are clear and unambiguous.

Based on the above factors, I determine that the pet restriction clauses in the tenancy agreement and addendum are material terms of the tenancy.

Turning to section 47 of the Act.

47 Landlord's notice: cause

(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 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;

The landlord gave the tenant written notice to comply with the tenancy agreement on October 16th, October 21st, November 6th and on December 13th. Two of the notices, provided deadlines to comply with the tenancy agreement by removing the guinea pigs and the tenant failed to do on both occasions. I find the tenant has failed to comply with a material term of the tenancy and has not corrected the situation within a reasonable time after the landlord gave her written notice to do so. Pursuant to section 47, I uphold the landlord's One Month Notice To End Tenancy for Cause.

Section 55 states that if a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, the director must grant to the landlord an order of possession of the rental unit if the landlord's notice to end tenancy complies with section 52 *[form and content of notice to end tenancy]*, and the director, during the dispute resolution proceeding, dismisses the tenant's application or upholds the landlord's notice.

I have examined the landlord's notice and find that it complies with the form and content provisions of section 52 of the *Act.* The effective date on the Notice of February 11, 2020 was premature since it cannot take effect any sooner than February 29th since rent is payable on the first day of the month. However, since the earliest effective date of March 1, 2020 has already passed, the landlord is entitled to an order of possession effective 2 days after service upon the tenant.

As the tenant's application was not successful, the tenant is not entitled to recovery of the $100.00 filing fee for the cost of this application.

Conclusion

I grant an Order of Possession to the landlord effective **2 days after service on the tenant**. Should the tenants or anyone on the premises fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia. 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 18, 2020

Residential Tenancy Branch