Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC

Introduction
This hearing dealt with an application filed by the tenant pursuant the *Residential Tenancy Act* (the "*Act*") for an order to cancel a 1 Month Notice to End Tenancy for Cause, pursuant to sections 47 and 55.

The tenant attended the hearing accompanied by an advocate, JC. The landlord was represented at the hearing by property managers of the rental unit, ML and EL. As both parties were present, service of documents was confirmed. The landlord's agents confirmed receipt of the tenant's Notice of Dispute Resolution Proceedings package and the tenant confirmed receipt of the landlord's evidence package. Both parties stated they had no concerns with timely service of documents.

The parties were informed at the start of the hearing that recording of the dispute resolution is prohibited under the Rule 6.11 of the Residential Tenancy Branch Rules of Procedure ("Rules") and that if any recording was made without my authorization, the offending party would be referred to the RTB Compliance Enforcement Unit for the purpose of an investigation and potential fine under the *Act*.

Each party was administered an oath to tell the truth and they both confirmed that they were not recording the hearing.

Preliminary Issue
At the commencement of the hearing, I noted that the party named as the landlord by the tenants in their application did not match the one named as the landlord in the application for dispute resolution. The landlord's agents stated that they are the co-managers of the rental unit, however the unit is owned by the person named on the tenancy agreement as landlord. I amended the name of the landlord pursuant to Rule 4.2 of the Residential Tenancy Branch rules of procedure so that the name matches the

one listed as landlord on the tenancy agreement. The correctly named landlord is listed on the cover page of this decision.

Issue(s) to be Decided

Should the landlord's 1 Month Notice to End Tenancy for Cause be upheld or cancelled?

Background and Evidence

At the commencement of the hearing, I advised the parties that in my decision, I would refer to specific documents presented to me during testimony pursuant to rule 7.4. In accordance with rules 3.6, I exercised my authority to determine the relevance, necessity and appropriateness of each party's evidence.

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.

The landlord gave the following testimony. The rental unit is one of 26 townhomes owned by the landlord. Each of the townhomes are tenanted. The tenant's property is one of the townhomes owned by the person named as landlord on the tenancy agreement. The tenancy was entered into by a previous property manager company and there have been successive property manager companies before the present ones here representing the landlord for this hearing.

The co-manager of the rental unit, EL served the tenant with a 1 Month Notice to End Tenancy for Cause by putting it in the tenant's mailbox on January 26, 2022. This was witnessed by co-manager ML. A copy of the notice to end tenancy was provided as evidence. 3 reasons for ending the tenancy were provided:

1. the tenant has allowed an unreasonable number of occupants in the unit/site;
2. breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so;
3. non-compliance with an order under the legislation within 30 days after the tenant received the order or the date in the order;

Under "details of cause" the landlord wrote:

Tenants moved into the rental unit December 15, 2017. They stated they had no pets and did not pay a pet deposit. It was later noticed (by owner of complex) that there were up to 4 dogs in the unit and at least 1 cat. The original Property Manager contacted tenants and issued notice to remove the pets. Tenants complied but then brought the pets back at a later date. Pets were noticed again and current property manager confirmed that if the pet deposit was paid they could have 2 dogs and 1 cat in he unit. This agreement was confirmed verbally with the tenants and the property manager and pet deposit was paid. Tenants have since brought at least one more dog into the unit for up to a total of 4 dogs and 1 cat. This is against the City bylaws as well as the amount of pets that the owner of the complex allows (all other tenants in the complex have no more than 2 pets) A notice was issued to remove the extra pets in the unit but the tenants have not complied. Tenant states that one of the dogs is a Support Animal but City Bylaws have stated that this dog still counts as a dog. City Bylaws state that in City limits residents are not to have more than 2 dogs unless they have a kennel permit.

During the hearing, the landlord acknowledged that there is not an unreasonable number of occupants in the rental unit, just an excess of pets. This reason for ending the tenancy was withdrawn by the landlord.

The landlord also testified that she has not pursued an order from a government agency regarding the number of pets. She has corresponded with the bylaw office of her city who provided information regarding a bylaw concerning the number of pets and whether it constitutes a kennel, but as far as government orders are concerned, she has none.

The landlord testified that she and the co-manager took over management of the rental unit in 2020. She is unaware of any paperwork served upon the tenant prior to taking over management of the rental unit. They understood from the tenancy agreement that pets were not allowed in the rental unit. In June 2020, a neighbour told the property managers that this tenant had pets – specifically dogs.

In June 2020, property manager EL spoke to the tenant and told them about the landlord's rules about pets. The landlord was OK with each tenant having a maximum of 2 pets, but in this instance, the landlord allowed the tenant to keep 2 of his 4 dogs and a cat as long as the tenant paid the pet damage deposit of $550.00, payable over several months. This agreement was not put into writing at the time. The tenant told the property managers that he would remove 2 of the 4 dogs and they were satisfied with that. There were no concerns with the tenant's pets until November 2021.

In November 2021, the owner of the townhouse complex noticed the tenant had more than 2 dogs in his unit and told property managers to inspect many of the rental units on 24 hours notice. The property managers discovered the tenant still had 4 dogs and a cat

in his unit, despite telling the property managers that he would only have 2 dogs and a cat.

The property managers testified that on December 16, 2021, they delivered a formal notice to the tenant reminding him of the verbal conversation saying there is a 2 dog limit and that the tenant has until January 17, 2022 to remedy the situation. The property managers testified that property manager EL served the letter by placing it in the tenant's mailbox on December 16th and property manager ML testified that she witnessed the service.

The property managers testified that subsequent to serving the formal notice, the tenant spoke to them and promised to remove 2 of the dogs which never happened. The landlord served the notice to end tenancy to get the tenant to comply or move out.

The landlords submit that the owner of the townhouse complex has a right to limit the number of pets in the units he owns. The rules are not being followed and this tenant was dishonest from the beginning. The landlord submits that it's unfair to the other residents who have acted honestly and had the landlord's permission to have pets up front. If this tenant had revealed he wanted 4 dogs and a cat, the landlord would not have entered into a tenancy agreement with him.

The tenant gave the following testimony. He denies being served with the December 16th warning letter. He was aware from verbal conversations that the landlord didn't want him to keep 4 dogs and a cat, but he never got a written notice, just the notice to end tenancy.

The tenant acknowledges he has 4 dogs and a cat, all registered and licensed with the city. He paid the landlord's pet damage deposit and paid the city for the licenses and doesn't see why it's an issue. The property managers have seen the dogs, complimented him on them and even petted them.

Analysis

I am satisfied the tenant was served with the landlord's 1 Month Notice to End Tenancy for Cause on January 29, 2022, three days after January 26th, the day it was placed in his mailbox pursuant to sections 88 and 90 of the *Act*. The tenant filed his application to dispute the notice on January 27, 2022.

The first reason for ending the tenancy – an unreasonable number of occupants, was withdrawn.

The third reason, non-compliance with an order under the legislation within 30 days after the tenant received the order or the date in the order, I dismiss as a reason to end the tenancy, as the landlord has acknowledged there is no government order being breached by the tenant.

This leaves me with the second reason for ending the tenancy: breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so. When a tenant disputes a notice to end tenancy, the landlord must show on a balance of probabilities, which is to say it is more likely than not, that the tenancy should be ended for that reason.

Residential Tenancy Branch Policy Guideline PG-8 [Unconscionable and Material Terms] provides guidance to landlords and tenants regarding material terms of a tenancy. It states:

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.

The tenant argues that he was not provided with the landlord's warning letter dated December 16th which provides the date for the tenant to remove the additional pets,

January 17, 2022. Based on the landlord's testimony that it was placed in the tenant's mailbox, I find that on a balance of probabilities, service of the warning letter was effected three days after December 16th on December 19th pursuant to sections 88 and 90. I base this decision on the fact that the tenant has acknowledged being served with the landlord's notice to end tenancy which was served in the same way and on the nature of the conversations between the property managers and the tenant after serving the notice.

As stated in the policy guideline, *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.* The landlord's agents at the hearing before me emphasized that on multiple occasions that "*it was the landlord's rule"* that there be no more than 2 pets per unit. No additional reasoning was provided, other than that it would be unfair to the honest tenants who revealed that they had pets when entering into their tenancies and paid the pet damage deposit. The landlord did not allege any damage to the rental unit from the pets, nor did the landlord allege any danger or unreasonable disturbance to the other residents. It was simply because the tenant had too many pets compared to his neighbours. Consequently, I have insufficient evidence to satisfy me that restricting the number of pets to 2 is a material term of the tenancy.

I also look at the actions of the landlord upon discovering the tenant had the pets. I accept that there is general "rule" that there can only be 2 pets per household and that there was a discussion between the property manager and the landlord when the landlord started collecting the pet damage deposit. Unfortunately, the property managers didn't follow up the verbal discussion with any written agreement regarding pets that the tenant was obligated to follow. As such, the landlord cannot turn to the existence of a material term of the tenancy agreement that is being breached by the tenant in order to validate their reasons for ending the tenancy. Nor is there an addendum to the tenancy agreement entered into when the landlord began to allow pets and accept the pet damage deposit. Without a signed agreement, there is no agreement from the tenant that he is required to follow the pet restriction number.

For the reasons set out above, I find the landlord has provided insufficient evidence to satisfy me the tenant breached a material term of the tenancy. I cancel the landlord's notice to end tenancy and order that the tenancy is to continue until it is ended in accordance with the *Act*.

Conclusion

The notice to end tenancy is cancelled.

This tenancy shall continue until it is ended in accordance with the *Act*.

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: May 03, 2022

Residential Tenancy Branch