Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes Application filed August 30, 2022: CNC FFT
Application filed October 3, 2022: MNDCT, RP, FFT
Application filed October 4, 2022: MNRT FFT

Introduction

This hearing dealt with the tenants' applications pursuant to the *Residential Tenancy Act* (the *Act*) for:

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- cancellation of the landlord's 1 Month Notice to End Tenancy for Cause (the 1 Month Notice) pursuant to section 47;
- an order to the landlord to make repairs to the rental unit pursuant to section 33;
- a monetary order for compensation for money owed under the *Act*, regulation or tenancy agreement pursuant to section 67; and
- authorization to recover the filing fees for their applications from the landlord, pursuant to section 72 of the *Act*.

The landlord attended the hearing with their interpreter, agent, and legal counsel. Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another.

Both parties were clearly informed of the RTB Rules of Procedure about behaviour including Rule 6.10 about interruptions and inappropriate behaviour, and Rule 6.11 which prohibits the recording of a dispute resolution hearing by the attending parties. Both parties confirm that they understood.

The landlord confirmed receipt of the tenants' applications for dispute resolution hearing package ("Applications"). In accordance with section 89 of the *Act*, I find the landlord duly served with the tenants' Applications. Both parties confirmed receipt of each other's evidentiary materials, which were duly served in accordance with section 88 of the *Act*.

The tenants acknowledged receipt of the 1 Month Notice to End Tenancy for Cause dated August 20, 2022, which was emailed to the tenants. In accordance with section 88 Act, I find the tenants duly served with the 1 Month Notice.

Preliminary Issue – Tenants' Other Claims

Residential Tenancy Branch (RTB) Rule of Procedure 2.3 states that claims made in an Application for Dispute Resolution must be related to each other. Arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply.

The hearing started at 9:30 am, and ended at 10:42 a.m. in order to deal with the landlord's Notice to End Tenancy. As the time allotted was insufficient to allow the tenants' other claims to be heard along with the application to cancel the 1 Month Notice to End Tenancy, I exercise my discretion to dismiss the portions of the tenants' applications unrelated to the 1 Month Notice with leave to reapply. Liberty to reapply is not an extension of any applicable timelines.

I note that the tenants had testified that they had wanted their claims to be heard separately as they had anticipated that there would be insufficient time to have all their matters heard, and had even filed their second and third applications on separate dates to avoid the joining of all three applications. Regardless, the three applications were scheduled by the RTB for one hearing slot despite the tenants' wishes. As the filing fee is a discretionary award issued by an Arbitrator usually after a hearing is held and the applicant is successful on the merits of the application, and as no findings were made on the merits of the other two applications, I am unable to order that the landlord reimburse the tenants for the application fees paid for these applications. The tenants were directed to contact the RTB in relation to any issues related to the filing fees and the filing of new applications.

Lower Mainland: 604-660-1020
Victoria: 250-387-1602
Elsewhere in BC: 1-800-665-8779

Issue(s) to be Decided

Should the landlord's 1 Month Notice be cancelled? If not, is the landlord entitled to an Order of Possession?

Are the tenants entitled to recover the filing fee for their application?

Background and Evidence

While I have turned my mind to all the documentary evidence properly before me and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of this application and my findings around it are set out below.
ed that they understood.

This month-to-month tenancy began on April 15, 2021, and continued on a month-to-month basis after April 30, 2022. Monthly rent is currently set at $2,100.00, payable on the first of the month. The landlord holds a security deposit of $1,050.00 for this tenancy.

On August 20, 2022, the tenants were served with a 1 Month Notice to End Tenancy for Cause on the following grounds:

1. Breach of a material term of the tenancy agreement that was not corrected within a reasonable amount of time after written notice to do so.

The landlord is requesting an Order of Possession as they feel that the tenants have breached a material term of the tenancy agreement. A copy of the written tenancy agreement was submitted for this hearing, which shows section 5 of the tenancy agreement to be crossed out, and initialed by both parties. Section 5 of the tenancy agreement contains the following clause:

“PETS

Any term in this tenancy agreement that prohibits, or restricts the size of, a pet or that governs the tenant’s obligations regarding the keeping of a pet on the residential property is subject to the restrictions under the *Guide Dog and Service Dog Act.*”

The landlord notes that no pet damage deposit was collected for this tenancy, and that section 9 related to assigning or subletting was also crossed out and initialed by both parties. The landlord notes an attached addendum which states “Assign or sublet of the rental unit is strictly prohibited and the tenant hereby agrees.”.

The landlord argued that by specifically crossing out and initialing the section that relates to pets, and by not collecting a pet damage deposit, the landlord had made it clear that no pets were permitted for this tenancy, and that this was clearly understood and agreed to by the tenants, even if the tenancy agreement or addendum did not specifically stipulate that no pets were allowed. The landlord also argued that by

keeping guinea pigs as pets in the rental unit, the tenants breached a material term of the tenancy agreement.

The landlord testified that although they have requested that the tenants care for the landlord's pet hamster in the August 2021, the landlord had never permitted the tenants to keep any pets of their in the rental unit, nor have the tenants ever requested permission to do so.

The landlord testified that due to the pandemic, the two parties would meet outside of the rental unit, and the landlord did not enter the tenants' rental unit. The landlord testified that prior to June 2022, they did not enter the rental unit, and was unaware of the fact that the tenants had any pets inside. The landlord testified that they had entered the rental unit in June 2022 to investigate a leak, and noted several cages inside the rental unit as well as guinea pigs. The landlord sent a warning letter to the tenants on July 28, 2022 informing the tenants that if they did not remove the guinea pigs in five days, the landlord would serve the tenants a 1 month Notice to End Tenancy for breaching a material term of the tenancy agreement.

The landlord testified that not only did the tenants fail to respond to that warning letter, the tenants continue to keep pets in the rental unit despite the issuance of the written warning and 1 Month Notice to End Tenancy.

The tenants do not dispute that they have pets in the rental unit. The tenants confirmed in the hearing that they originally had four guinea pigs, which have reproduced, and now there are eight total. The tenants testified that they were in the process of rehoming the baby guinea pigs.

The tenants testified that the landlord's agent had gone over the tenancy agreement with the tenants, and that they had initialed and signed off in the areas that were pointed out to them. The tenants testified that they did not question the purpose of the initials as they just wanted a place to live. The tenants dispute that the landlord had ever included a no pets clause in the tenancy agreement, and argued that the landlord even knew about the guinea pigs prior to June 2022. The tenants argued that the July 28, 2022 warning letter and subsequent 1 Month Notice was served in retaliation following the previous disputes between the parties. The tenants note that a hearing was held on July 15, 2022, and a decision was rendered on July 20, 2022 which related to a 1 Month Notice to End Tenancy as well as a 2 Month Notice to End Tenancy. Both Notices were cancelled by the Arbitrator on July 20, 2022, and the Arbitrator ordered that the tenancy continue. The tenants received the warning letter 8 days later.

The tenants agree that they did not respond to the warning letter as they felt harassed by the landlord, noting the previous history between the two parties and the arbitration hearings. The tenants testified that they had the guinea pigs since August 26, 2021, as supported by the receipt in evidence for a pet cage the tenants had purchased online. The tenants testified that they did purchase additional cages to upgrade the habitat to include larger cages in 2022.

The tenants testified that they had decided to get the pet guinea pigs after caring for the landlord's hamster between August 19 and 29, 2021, and even had a conversation with the landlord about doing so. The tenants testified that the landlord had entered the rental unit between September and October 2021 in order to attend to repairs inside the rental unit. The tenants testified that this evidence is in contrast to the landlord's testimony that they had never entered the suite, and therefore was unaware of the guinea pigs.

Analysis

Section 47(1) of the *Act* allows a landlord to end a tenancy for cause for any of the reasons cited in the landlord's 1 Month Notice.

A party may end a tenancy for the breach of a material term of the tenancy but the standard of proof is high. To determine the materiality of a term, an Arbitrator will focus upon the importance of the term in the overall scheme of the Agreement, as opposed to the consequences of the breach. It falls to the person relying on the term, in this case the landlord, to present evidence and argument supporting the proposition that the term was a material term. As noted in RTB Policy Guideline #8, 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. The question of whether or not a term is material and goes to the root of the contract must be determined in every case in respect of the facts and circumstances surrounding the creation of the Agreement in question. It is entirely possible that the same term may be material in one agreement and not material in another. Simply because the parties have stated in the agreement that one or more terms are material is not decisive. The Arbitrator will look at the true intention of the parties in determining whether or not the clause is material.

Policy Guideline #8 reads in part as follows:

> *To end a tenancy agreement for breach of a material term the party alleging a breach…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…*

In this case, the landlord has maintained that the tenants have breached a material term of the tenancy agreement by keeping pets in the rental unit without the landlord's permission. The landlord provided a copy of the tenancy agreement as well as the written warning sent to the tenants on July 28, 2022. The landlord testified that despite the issuance of the warning and 1 Month Notice the tenants have not removed the guinea pigs from the rental unit, which constitutes a material breach of the tenancy agreement.

In consideration of the evidence before me, not only am I not satisfied that there is a breach of a material term of the tenancy agreement, I find that the landlord has failed to establish that there is even a term on the tenancy agreement that prohibits pets.

I find that the tenancy agreement does not clearly stipulate that pets are not allowed. Although no pet damage deposit was collected, and "not applicable" was selected, I find that this selection only refers to the fact that the tenants did not have any pets at the time the tenancy agreement was signed, and therefore the deposit section was not applicable. Furthermore, a pet damage deposit is not a mandatory term of the tenancy agreement, and the absence of one does not automatically imply that pets are not allowed. For example, a tenant may keep a pet even in the absence of a pet damage deposit, if this is agreed to by both parties. I am not satisfied that the absence of a pet damage deposit constitutes an agreement that pets are not allowed.

The landlord also noted that there are two sections of the tenancy agreement that are crossed out and initialed by both parties—the section labeled "pets", and the section labeled "assign or sublet". I note that there is an attached addendum that contains 9 additional clauses, including a specific clause about how sublets or assignments are strictly prohibited. Unlike the sublet or assignment clause in the addendum, there is no specific clause included anywhere in the tenancy agreement or addendum that refers to how pets are prohibited, or how permission from the landlord is required. The only reference to pets in the tenancy agreement is the section that is crossed out, and which states how any prohibitions or restrictions in relation to pets are subject to the rights and restrictions under the *Guide Dog and Service Dog Act.* I find that the tenancy agreement

clearly shows how the landlord had carefully contemplated additional terms that the landlord would consider to be important to the tenancy agreement, such as prohibitions against subletting and smoking, but there is no clear and specific clause about how pets are not allowed. Although the landlord had argued that they had communicated to the tenants about how pets were prohibited, I do not find this to be supported in evidence.

As stated above, "It falls to the person relying on the term, in this case the landlord, to present evidence and argument supporting the proposition that the term was a material term". I find that the landlord not only failed to establish that the tenants had breached a material term of the tenancy agreement, I am not satisfied that there was ever a term on the tenancy agreement itself that restricted or prohibited pets, express or implicit. I therefore find that the landlord had failed to establish that this tenancy should end on the grounds that the tenants have breached a material term of the tenancy agreement. Accordingly, I allow the tenants' application to cancel the 1 Month Notice dated August 20, 2022. The tenancy is to continue until ended in accordance with the *Act.*

As the tenants were successful with their application to cancel the 1 Month Notice, I allow the tenants to recover the fling fee this application.

Conclusion

The tenants' applications to cancel the landlord's 1 Month Notice is allowed. The landlord's 1 Month Notice dated August 20, 2022 and is of no force or effect. This tenancy is to continue until it is ended in accordance with the *Act*.

I allow the tenants to recover the $100.00 filing fee. I allow the tenants to implement a monetary award of $100.00 by reducing a future monthly rent payment by that amount. In the event that this is not a feasible way to implement this award, the tenants are provided with a Monetary Order in the amount of $100.00, and the landlord must be served with **this Order** as soon as possible. Should the landlord fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court.

The remaining applications are dismissed with leave to reapply. Liberty to reapply is not an extension of any applicable timelines.

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: January 30, 2023