



Dispute Resolution Services

Residential Tenancy Branch
Ministry of Housing

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DECISION

Dispute Codes CNC FFT

Introduction

The tenant seeks an order cancelling a *One Month Notice to End Tenancy for Cause* (the “Notice”) under section 47(4) of the *Residential Tenancy Act* (the “Act”). The tenant also seeks to recover the cost of the application fee under section 72 of the Act.

Issues

1. Is the tenant entitled to an order cancelling the Notice?
2. If not, is the landlord entitled to an order of possession?
3. Is the tenant entitled to recover the cost of the application fee?

Evidence and Analysis

In a dispute resolution proceeding, the applicant must prove their claim on a balance of probabilities (meaning “more likely than not”). I have considered the parties’ testimony, arguments, submissions, and documentary evidence, but will only refer to evidence that I find relevant and necessary to explain the decision.

The tenancy began on November 1, 2017. A written tenancy agreement was executed by the parties on or about that same date. The tenancy agreement is undated, but both the tenant and the landlord signed the four-page contract.

The landlord's agent testified under oath that the tenant is consistently and constantly feeding wild birds at the rental unit. This behavior is, the landlord noted, a breach of a material term of the tenancy agreement. The landlord testified that this has been going on for well over a year, and that the tenant was warned on several times to stop.

The material term of the tenancy agreement is term 18 on page 2, and this term is reproduced in full below (highlighting added):

18. **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 for 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.**

The warnings came to a head when a final written warning letter dated May 26, 2022, was served upon the tenant on May 27, 2022. After some time passed, and the feeding continued, the landlord issued the Notice on June 6, 2023, and the tenant filed their application for dispute resolution disputing the Notice on June 15, 2023. The parties did not dispute the service of the Notice and there were no service issues with this application.

The landlord's agent testified under oath that there were four reasons indicated on page two of the Notice for why the landlord sought to terminate the tenancy.

The fourth reason indicated was that set out under section 47(1)(h) of the Act and mirrored to largely the same extent on page two of the Notice. Namely, the landlord gave the Notice because:

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.

There are three other grounds for issuing the Notice; however, given my reasons below, these grounds will not be addressed further.

The tenant testified under oath that he has been feeding the birds. He also referred to other tenants in the building who have extensive and elaborate bird feeders, and one tenant on the ground level who constantly feeds racoons and other wildlife.

The tenant further testified that he was probably not aware of the material term in the tenancy agreement regarding the prohibition on feeding wildlife. (The landlord's agent clarified that bird feeders are permitted, but not hand feeding.) He noted that because the term is titled "PETS," and he didn't have any pets, he figured that he probably did not read this term in detail or with much attention. However, it is noted that the tenant did not dispute the landlord's agent's position that the term restricting the feeding of wildlife was a material term of the tenancy.

The landlord's agent argued that even if the tenant was not aware of the term when he signed the tenancy agreement, it is reasonable to assume that the tenant became aware of the term after being repeatedly warned, including a final warning letter.

Taking into consideration all the evidence before me, it is my finding on a balance of probabilities that the tenant breached a material term of the tenancy agreement and did not correct the situation within a reasonable period. Indeed, the tenant had more than a year to stop feeding the wild birds at the residential property. I am also persuaded by the landlord's argument that, even if the tenant was initially (back in 2017) unaware of material term #18, he would have more than likely become aware after being repeatedly warned.

For these reasons, it is my finding that the landlord has proven a ground on which the Notice was given, and the Notice is held to be valid.

The tenant's application for an order canceling the Notice is dismissed and the landlord is issued an order of possession effective August 31, 2023. A copy of the order of possession is issued with this Decision to the landlord, who must serve the order upon the tenant forthwith.

As an aside, while it is not lost on me that other tenants in the building appear to be engaged in the feeding of fauna, what and how the landlord deals with those tenants is beyond the issue of whether *this* tenancy includes a material term prohibiting the feeding of wild animals. Indeed, it would be necessary for me to have a copy of every single tenancy agreement of all tenants in the property for me to determine whether and to what extent issues of estoppel might apply. But in respect of *this* tenancy, the tenant has regrettably breached a material term and ignored his landlord's requests to stop.

Conclusion

The tenant's application is hereby dismissed without leave to reapply.

The landlord is granted an order of possession of the rental unit. The tenancy is hereby ordered ended effective August 31, 2023.

This decision is issued under section 9.1(1) of the Act.

Dated: July 28, 2023

Residential Tenancy Branch