



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards
Ministry of Housing and Social Development

DECISION AND REASONS

Dispute Codes: CNC

Introduction

This hearing dealt with an application by the tenant pursuant to the *Residential Tenancy Act* for orders as follows:

1. To cancel a Notice to End Tenancy given for cause.

I accept that the landlord was properly served with the Application for Dispute Resolution hearing package.

Both parties appeared and gave evidence under oath.

Summary of Background

The landlord testified that he purchased the rental property in December 2008 and assumed this tenancy. The landlord submitted a written tenancy agreement dated March 31, 2008 signed by this tenant and the former landlord containing a clause that states, in part:

This Tenancy Agreement may be terminated by the landlord for any of the following reasons (providing local laws permit): keeping a pet and/or roommate without permission from the landlord.

The landlord testified that the tenant is in breach of the tenancy agreement because she has dogs, snakes and rats. The landlord testified that the animals create unsanitary conditions and a "terrible smell" on the property and this "jeopardizes the future rental of the cabin". The landlord testified that in addition to the yard being full of feces the tenant does not take out the garbage. In evidence the landlord submitted a letter from the realtor who showed the rental property while it was listed. In the letter the realtor states that the home was acceptable although "very stinky for showings" and he had to make sure the dog was with the owner as it was protective of the property. The landlord also submitted a letter from the former landlord/owners of the property dated January 22, 2009 which states in part:

1. At no time during Ms. K's tenancy did we either verbally or contractually agree to her keeping pets in the residence or on our property. The keeping of pets is a direct violation of the terms of the lease agreement.
2. With regards to the garbage problem we have in the past, reminded Ms. K of her responsibility to keep her garbage contained and keep the property clean and sanitary. We stayed at one pointed to watch and help her clean up the garbage from the property, going so far as to buy her garbage cans to put the garbage in.

She was reminded that uncontained garbage constitutes a health hazard and was warned that this was direct violation of the terms of the lease.

(reproduced as written; names abbreviated to protect privacy)

The landlord submitted photographs of the rental. The landlord submitted a further letter signed by someone with the same last name as the landlord who states that they attended the rental property to deal with frozen water lines on December 16 which states in part:

Upon entry to the premises, I immediately noticed the strong odor of animals. and specifically rat urine and the smell of dogs. Noticing the rats in an aquarium, I asked about them as pets, and was told that they were kept as food for the snake. The snake I did not see.

I was also aware of a significant amount of bagged and loose household garbage strewn about the porch and yard.

(reproduced as written)

In response to the landlord's allegations the tenant testified that she has one dog, one snake and no rats. The tenant states she had a verbal agreement with the former landlord's that allowed her to keep a dog. The tenant stated that she did not know how to prove she had a verbal agreement if this landlord and the former landlords wished to lie. In her application the tenant states that it is untrue that she is putting the landlord's property at risk because her garbage is bagged. She states that garbage pick up was not possible due to road conditions. She states that the dog feces are easily removed "now as frost is thaw". The tenant repeated that she had a verbal agreement with the last landlord's to be allowed to keep the dog.

Analysis and Findings

Having issued a notice to end this tenancy the landlord has the burden of proving he has cause to end the tenancy. At the hearing of this matter a great deal of the testimony and evidence put forth by the landlord dealt with the issue of breach of the tenancy agreement respecting pets and garbage. At the hearing the landlord requested an Order of Possession and, if breach had been alleged that request might have been allowed, however, upon further inspection of the Notice to End Tenancy served on the tenant the landlord has not alleged a "Breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so". Therefore the testimony and evidence with respect to the breach of the agreement are irrelevant.

I must now turn my mind to whether the landlord has proven that he has cause to end this tenancy for the reasons stated on the Notice to End Tenancy, those are:

That the tenant or a person permitted on the property by the tenant has:

Put the landlord's property at significant risk.

That the tenant has engaged in illegal activity that has, or is likely to:

Damage the landlord's property.

And:

Tenant has caused extraordinary damage to the unit/site or property/park.

Significant risk

While the landlord has alleged and provided photographic and corroborating evidence that the rental property is littered with garbage and feces and that the house smells the tenant says that there has been frost and now that it is gone the garbage and feces can be removed. I accept that evidence and also find that the landlord has failed to prove how the feces and garbage bags pose a significant risk to his property.

Illegal activity

The term "illegal activity" would include a serious violation of federal, provincial or municipal law, whether or not it is an offence under the Criminal Code. It may include an act prohibited by any statute or bylaw which is serious enough to have a harmful impact on the landlord, the landlord's property, or other occupants of the residential property.

The party alleging the illegal activity has the burden of proving that the activity was illegal. Thus, the party should be prepared to establish the illegality by providing to the arbitrator and to the other party, in accordance with the Rules of Procedure, a legible copy of the relevant statute or bylaw.

In considering whether or not the illegal activity is sufficiently serious to warrant terminating the tenancy, consideration would be given to such matters as the extent of interference with the quiet enjoyment of other occupants, extent of damage to the landlord's property, and the jeopardy that would attach to the activity as it affects the landlord or other occupants.

The landlord gave insufficient evidence of illegal activity at all.

Extraordinary Damage

With the exception of odour and the mess of feces and garbage bags, all of which can be remedied, I find that the landlord has failed to prove extraordinary damage.

Conclusion

The tenant's application is allowed. The Notice to End Tenancy effective February 28, 2009 is cancelled with the effect that this tenancy will continue.