



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes CNR, CNC

Introduction

This matter dealt with an application by the Tenants to cancel a 10 Day Notice to End Tenancy for Unpaid Rent dated November 2, 2009 and to cancel a One Month Notice to End Tenancy for Cause dated October 30, 2009.

At the beginning of the hearing the Landlord confirmed that the Tenants paid the arrears alleged on the 10 Day Notice within 5 days of receiving it and as a result, that Notice is cancelled pursuant to s. 46(4) of the Act.

The hearing started as scheduled at 9:00 a.m., however by 9:10 a.m., the Tenants/Applicants had not dialled into the conference call. Consequently, the hearing proceeded in the Tenants' absence.

Issues(s) to be Decided

1. Are the Landlords entitled to end the tenancy?

Background and Evidence

This tenancy started on June 1, 2008. On October 31, 2009, the Landlords served the Tenants in person with a One Month Notice to End Tenancy for Cause. The Notice alleged the following grounds:

- Tenant is repeatedly late paying rent;
- Tenant has allowed an unreasonable number of occupants in the unit/site; and
- Breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.

The Landlords claim that the Tenants asked for permission to get a guard dog and were told they could not do so. The Landlords said that the Tenants got a dog in any event so on August 20, 2009, they gave the Tenants a letter advising them that they were in violation of the tenancy agreement and had to get rid of the dog. The Landlords claimed that the Tenants refused to get rid of this dog and subsequently got another dog. Consequently, the Landlords argued that the Tenants were in breach of a material term of the tenancy agreement and have failed to correct it.

The Parties' tenancy agreement contains a clause (#6) which states that "there will be absolutely NO pets allowed to live on the premises under any circumstance. Violation of this will constitute a violation of this Agreement, at which time the tenants will be in direct violation of this agreement, constituting right for the landlord to request vacancy by the tenants."

Analysis

RTB Policy Guideline #8 (Unconscionable and Material Terms) at p. 2 defines a material term as "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."

In the absence of any evidence from the Tenants to the contrary, I find that the clause of the tenancy agreement prohibiting pets is a material term and that the Tenants breached that term when they got 2 dogs in violation of that agreement. I further find that the Landlords did not consent to the Tenants having the dogs on the rental property and gave them written notice on August 20, 2009 to remove the first dog which the Tenants failed or refused to do. Consequently, I find that there are grounds to support the One Month Notice to End Tenancy dated October 30, 2009 and the Tenants' application to cancel it is dismissed.

The Landlord requested and I find pursuant to s. 55(1) of the Act that she is entitled to an Order of Possession to take effect on November 30, 2009.

Conclusion

The Tenants' application is dismissed. An Order of Possession to take effect on November 30, 2009 has been issued to the Landlords. A copy of the Order must be served on the Tenants and may be enforced in 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: November 26, 2009.

Dispute Resolution Officer