



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes CNC

Introduction

This was an application by the tenants to cancel a Notice to End Tenancy for cause and for an order extending the time to apply for dispute resolution. The hearing was conducted by conference call. The tenant and the named representatives of the landlord took part and I heard evidence from two witnesses for the landlord.

Issues(s) to be Decided

Should the Notice to End Tenancy for cause dated June 23, 2010 be cancelled?

Background and Evidence

The rental property is a pad in a manufactured home park. The tenancy began August 1, 2008. The landlord served the tenants with a one month Notice to End Tenancy for cause dated June 23, 2010 by posting. The Notice required the tenants to move out by July 31, 2010. The Notice alleged that the tenants have engaged in illegal activity that has, or is likely to adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant or the landlord and; the tenants have breached a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so..

The landlord's representative said that the tenants have not completed required landscaping on the manufactured home site and said that they have three dogs on the premises after they promised to remove the dogs. The landlord's representative said

that the dogs returned to the rental property in June. According to the landlord's representative the park rules restrict the size and breed of dogs. He said one of the dogs appears to be a pit—bull breed and the dogs are larger than the maximum size permitted by the rules. The landlord's personal representative had no personal knowledge of the dogs and he has never seen them.

The landlord's witness, M.G. testified that she has lived in the manufactured home park since 1997. She said that on August 26, 2010 at 10:30 A.M. she saw a pickup truck with two dogs drive up to the tenant's manufactured home. She provided a license plate number for the truck which was similar to but not the same as the licence plate number of the tenant's vehicle. She referred to another occasion when she believed the tenants' had their dogs in the rental unit.

The landlord's witness, J. H. testified that he has lived in the park since 2004. He is a retired police officer. He testified that he was walking his Shih Tzu on February 12, 2010 when one of the tenants' dogs that resembles a pit bull crawled under the wire fence of the tenants' yard and attacked his dog, knocking it over. He testified that he is not afraid of dogs and he made the tenants' dog retreat, by pointing his cane at it. He said that one of the tenant's came outside but did not apologise for the attack on his dog. He said his dog was not injured, but maintained that it was traumatized by the event.

The witness has had no other contact with the tenants' dogs after February 12th and apart from hearsay related to him has no personal knowledge of the presence of the tenants' dogs at the park after February, 2010.

The landlord submitted a copy of a petition signed by tenants protesting the presence of pit-bulls in the park and referring specifically to a pit--bull attack upon another tenant's dog, presumably referring to the incident described by the landlord's witness.

The landlord submitted a letter addressed to the tenants dated February 24, 2010 wherein, among other matters, the landlord directed the tenants to remove their pets from the property by March 3, 2010.

The tenant testified that when she and her partner moved to the manufactured home park her dogs were approved by the resident manager. She testified that none of her dogs is a pit-bull. She has not bothered to obtain confirmation of that fact from her veterinarian because the dogs are not living with the tenants. She testified that they have been removed from the rental property and are living with the tenant's family in Kamloops. The tenant produced a letter from her relative that the tenants' dogs are and have been in her possession and living on her property since February, 2010. The tenant denied that she visited the rental property with her dogs on August 26, 2010 as reported by the landlord's witness, M.G. She said that on a rare occasion she has visited the property with her dogs in order to pick up something from the home, but the dogs have not resided at the rental unit since February. The tenant testified that she and her partner are moving and are attempting to sell their manufactured home on the pad. She testified that the tenants are relocating to the coast and they are seldom at the rental unit.

Analysis

I was not presented with any evidence that the landlord has been prejudiced by the tenant's late application and I allow the tenants' request for an extension of time to dispute the Notice to End Tenancy.

As one of the reasons for ending the tenancy the landlord alleged that the tenants have engaged in illegal activity. The Residential Tenancy Policy Guideline with respect to illegal activities provides as follows:

The Residential Tenancy Act and the Manufactured Home Park Tenancy Act provide that a landlord may terminate a tenancy for illegal activity that meets one or more of the following requirements:

- has caused or is likely to cause damage to the landlord's property
- has adversely affected or likely to adversely affect the quiet enjoyment, security, safety or physical wellbeing of another occupant of the residential property
- has jeopardized or is likely to jeopardize a lawful right or interest of another occupant or the landlord.¹

This Guideline is intended to clarify relevant issues such as the meaning of "illegal", what may constitute "illegal activity" and circumstances under which termination of the tenancy should be considered.

The Meaning of Illegal Activity and What Would Constitute an Illegal Activity

The term "illegal activity" would include a serious violation of federal, provincial or municipal law, whether or not it is an offense 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.

With respect to the alleged grounds for ending the tenancy, no evidence was presented to show that the tenants have engaged in any illegal activity; I find that there is no basis for the Notice to End Tenancy on this ground. The remaining ground is that the tenants have breached a material term of the tenancy agreement and have not corrected it within a reasonable time. I make no determination with respect to whether or not the park rules concerning pet ownership are material terms of the tenancy agreement, or whether or not they may be unenforceable on other grounds because on the evidence I find that the tenants removed their pets after the landlord ordered them to do so. I was not presented with any convincing evidence that the tenants' dogs continue to live at the rental unit. I find that even if the tenants have visited the park with their dogs in their vehicle in order to pick up or drop off items; this does not constitute a material breach of the tenancy agreement that would warrant the upholding of a Notice to End Tenancy.

The landlord's representative mentioned a failure on the tenants' part to carry out some landscaping, but he characterized this as a more trivial matter and did not rely upon it as a ground for ending the tenancy at the hearing.

I find that the landlord has not shown that there are proper grounds to uphold the one month Notice to End Tenancy for cause and I order that the Notice to End Tenancy be, and is hereby cancelled. The tenancy will continue.