



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes OLC O

Introduction

This hearing dealt with an Application for Dispute Resolution by the Tenants to obtain an Order to have the Landlord comply with the Act and for other reasons.

Service of the hearing documents, by the Tenants to the Landlords were done in person to the Landlords' office. The Landlords' Agents confirmed receipt of the hearing documents.

The parties appeared, acknowledged receipt of evidence submitted by the other, gave affirmed testimony, were provided the opportunity to present their evidence orally, in writing, and in documentary form.

Issues(s) to be Decided

- 1) Are the Tenants entitled to an Order to have the Landlords comply with the Act?
- 2) Is the Tenants' dog allowed to continue to reside with the Tenants?

Background and Evidence

I heard undisputed testimony that Agent 1 has worked for the Landlord since February 1993 and Agent 2 has been employed with the Landlord since August 2007. The tenancy was effective November 1994 and the current monthly rent is payable on the 1st of each month in the amount of \$709.00. The park rules allow tenants to have pets in the park, requires tenants to register the animals with the Landlord, stipulate restrictions to size, quantity, and the dog must be on a leash when outside. The park rules have been amended over the years. The Tenants acquired a dog in April 2003 and did not register it with the Landlords. There were issues surrounding the unregistered dog in 2004 which were left unresolved for six years until April 10, 2010 and August 19, 2010 when Agent (2) saw the dog outside and not on a lease.

The Tenant testified that they have still not registered their dog and have made no attempt to request a registration form from the Landlords. The dog is currently located at a temporary residence and the Tenants are seeking an Order to permit the dog return to their home.

The Agents testified that they have previously received verbal complaints from one of the Tenants' neighbour about the dog but that they did not take action on the complaints because the neighbour refused to put them in writing. They confirmed that for the six year period between 2004 and 2010 the Landlords took no action to either have the dog registered or removed from the park. They argued that no action was taken because they had thought the dog had been removed as the Tenants had kept the dog hidden from them in the past. They had previously discussed the issue with an Information Officer from the Residential Tenancy Branch and were advised that they could not take action unless they had a picture of the dog. Both Agents acknowledge that the underlying issues were that the dog was not registered, that she was not on a lease while outside and she is larger than what the lease provides for. They feel the Tenants have breached a material term of the tenancy agreement and the dog should not be allowed to reside in the park as this would set precedence for other tenants to breach the terms.

The Tenant confirmed the dog is now taller than the height requirement provided in the various park rules however she was smaller when they first acquired her. They had the understanding that she was fully grown when they adopted her however she continued to grow. They have not registered the dog because the Landlords have never sent them a registration form. The Tenant was instructed to stay away from the Landlord's office so she limits her presence to delivering the rent payment each month.

Analysis

Each participant submitted a voluminous amount of documentary evidence to the *Residential Tenancy Branch*, all of which has been carefully considered, along with the testimony, in making my decision.

A material term is a term written into the tenancy agreement that both parties agree is so important that the most trivial breach of that term gives the other party the right to end the agreement. In this case the Landlords are relying on a provision listed in their park rules pertaining to the size and registration requirements for a dog. Although Park rules are enforceable they can be changed throughout a tenancy and therefore do not meet the definition of a material term.

In making my decision I have considered that the dog has resided in the park for over seven years now and during the six year period between 2004 and 2010 the Landlords made no attempt to ascertain if the dog was still residing with the Tenants. I do not accept the Agents' argument that the Tenants kept the dog hidden as the evidence supports the dog travels in the Tenants' truck daily and often visits a neighbor. Therefore, I find the dog in question is entitled to reside with the Tenants in the manufactured home park for the remainder of its natural life or until the Tenants move out of the park. Further I hereby order that if after this current dog passes the Tenants wish to acquire another pet they must comply with "all" the park rules including the size requirements which are in effect at that time.

The evidence supports the park rules allow the Tenants to have a dog within a certain height restriction and stipulate the dog must be registered with the Landlord and kept on a leash while outside, even if the dog is within the yard or fenced area. Based on the aforementioned I hereby Order the Landlords to provide the Tenants with a registration form the next time the Tenant(s) are in the office to pay their rent. The Tenants are hereby ordered to complete the registration form and return it to the Landlords within 24 hours of receiving it. The Tenants are further ordered to comply with the park rules and ensure the dog is on a leash at all times it is outside.

Conclusion

I HEREBY ORDER the Landlords and the Tenants to comply with the Act and my above listed Orders, pursuant to section 55 of the *Manufactured Home Park Tenancy Act*

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Manufactured Home Park Tenancy Act*.

Dated: October 28, 2010.

Dispute Resolution Officer