

DECISION

Dispute Codes: CNC

Introduction

This hearing dealt with an application by the tenant for an order to set aside a notice to end tenancy for cause. Both parties attended the hearing and had opportunity to be heard. At the hearing the landlord made an oral request for an order of possession in the event that the tenant's application was not successful.

Issue to be Decided

Does the landlord have grounds to end this tenancy?

Background and Evidence

The tenancy began in May 1991. The rental unit consists of a pad in a mobile home park.

On July 07, 2010, the landlord received a letter of complaint from an occupant of the mobile home park. The letter described an incident that occurred on June 08, 2009. The writer states that as she was walking through the park, the tenant's dog charged at her and bit her on her right thigh. The complainant provided a photograph of the bite.

The letter goes on to describe a second incident on May 30, 2010 when the same dog charged at her barking fiercely. The complainant was carrying a small dresser and used it to protect herself from the dog.

The letter also states that on July 06, 2010, the writer walked to her mailbox to retrieve her mail and noticed the same dog running freely in public areas. Fearing that she may be attacked by the dog, the writer returned to her residence and drove her vehicle to the mailbox.

The complainant requested the landlord to ensure that the dog is on a leash at all times even in the presence of the respondents as both attacks occurred in their presence.

The landlord responded by serving the tenant with a warning letter on July 08. The landlord directed the tenant to have the dog on a leash at all times when the dog was outside their fenced yard. The letter also warned the tenant that a notice to end tenancy would be served on the tenant if any further complaints were received.

On September 08, 2010, the landlord received another letter of complaint regarding the same issue. The writer stated that the dog is allowed to run free without a leash in public areas and it was unsafe for the other occupants of the mobile home park.

On September 16, 2010, the landlord served the tenant with a second warning letter. The letter advised the tenant that the landlord was giving the tenant one more chance to rectify the problem failing which the landlord would serve the tenant with a notice to end tenancy for cause.

On October 08, 2010, despite the two warning letters both of which put the tenant on notice that a notice to end tenancy would be issued if the problem was not corrected, the landlord saw the dog running freely without a lease, in public areas. The landlord served the tenant with a notice to end tenancy for cause.

The landlord also filed a letter dated October 30, 2010 from another resident of the mobile park which states that the tenant's dog runs around freely in public areas and she fears for the safety of her children.

The tenant filed six letters of support from the residents of the mobile home park. These letters are dated October 21 to 25, and describe the dog as gentle and harmless. The tenant also filed a petition signed by 12 residents in support of the tenant's dog.

Both parties filed photographs of the dog – the landlord filed photographs of the dog without a leash in public areas and the tenant's photographs show the dog on a leash.

Analysis

In order to support the notice to end tenancy, the landlord must prove that the tenant seriously jeopardized the health and safety of another occupant and/or breached a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.

Based on the testimony of both parties, I find that by allowing the dog to run freely in public areas after it attacked an occupant of the mobile home has created a sense of insecurity and fear for personal safety among some occupants of the home park. The residents of the park include families with children. The charging activity of the dog accompanied by the fierce barking at some residents has left parents fearing for the safety of their children. The landlord gave the tenant two warning letters and a notice to end tenancy, but the tenant continued to allow the dog to roam freely in public areas thereby jeopardizing the health and safety of the other occupants. Therefore, I find that the landlord has cause to end the tenancy and I uphold the notice to end tenancy.

During the hearing, the landlord made a request under section 48 of the legislation for an order of possession. Under the provisions of section 48, upon the request of a landlord, I must issue an order of possession when I have upheld a notice to end tenancy. Accordingly, I so order. The tenant must be served with the order of possession. Should the tenant fail to comply with the order, the order may be filed in the Supreme Court of British Columbia and enforced as an order of that Court.

Conclusion

The notice to end tenancy is upheld and I grant the landlord an order of possession effective on or before **1:00 p.m. on December 31, 2010.**

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 22, 2010.

Dispute Resolution Officer