



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

CNC, OLC, FF

Introduction

This hearing dealt with an application by the tenant for an order to set aside a notice to end tenancy, for an order directing the landlord to comply with the *Act* and for the recovery of the filing fee. Both parties attended the hearing and had opportunity to be heard.

Issue to be Decided

Does the landlord have grounds to end this tenancy?

Background and Evidence

The tenancy began on May 01, 2011 for a fixed term of six months. At the end of the term, the tenancy continued on as a month to month tenancy. The monthly rent is \$1,400.00.

The tenancy agreement contains an addendum which was filed into evidence by the landlord. At the time the agreement was signed, the landlord allowed the tenant to have one small to medium sized dog. The tenants agreed but when they moved in, the landlord found out that the dog was a large breed dog. The landlord pointed it out to the tenants but did not take any action.

A term of the addendum states that “*the exterior grounds are to be kept in good order and the lawns cut regularly*” The landlord stated that the tenant does not maintain the bushes and shrubs and allows the dog to urinate in an area of the front yard which has caused discoloration of the grass. The landlord filed photographs depicting the discolored areas on the lawn.

The tenant argued that the yard was not maintained by the landlord or by the previous tenants and it was their understanding that they were only responsible for the cutting of the grass and did not have to trim the bushes or shrubs. The tenant also added that the dog uses a graveled area for urination.

Another term in the addendum also prohibits the tenants from using the downstairs basement.

Access to this area cannot be locked off because the breaker box and the tenant's storage unit are located in the basement. The tenant admitted that a relative visited twice a year and used the basement during the visit. The tenant stated that the landlord had given his permission for this use. The landlord denied this but agreed that he allowed the tenant to store an end table at the foot of the steps to the basement.

The tenant testified that the landlord enters the rental unit in their absence as witnessed by a neighbor. The landlord denied this. He stated that he always gave the tenant verbal notice to enter the unit and did so in their presence.

On April 01, 2012, the landlord served the tenant with a one month notice to end tenancy for cause. The notice to end tenancy alleges that the tenant has breached a term of the tenancy agreement and has knowingly given false information to a prospective tenant.

Analysis

In order to support the notice to end tenancy, the landlord must prove at least one of the grounds alleged, namely that the tenant has breached a term of the tenancy agreement and has knowingly given false information to a prospective tenant.

Despite being aware of the size of the tenant's dog, right from the start of the tenancy, the landlord took no action and did not serve the tenant a warning letter to have the dog removed from the premises. The tenancy agreement does not specify what yard maintenance is the responsibility of the tenant other than cutting the grass.

As explained to the parties during the hearing, the onus or burden of proof is on the party making a claim to prove the claim. When one party provides evidence of the facts in one way and the other party provides an equally probable explanation of the facts, without other evidence to support the claim, the party making the claim has not met the burden of proof, on a balance of probabilities, and the claim fails.

In this case, the tenant and landlord offered contradictory testimony regarding the use of the basement. The tenant stated that the landlord gave her permission to use the basement for the occasional visitor. The landlord denied this. In the absence of additional evidence to support the tenant's testimony, I find that on a balance of probabilities, it is more likely than not that the tenant did not have the permission of the landlord for the use of the basement.

Accordingly the tenant breached a term of the agreement. However the landlord did not serve the tenant a written notice to correct the breach and therefore I find that this breach is not grounds enough to end the tenancy.

For the same reasons, I am not satisfied that the other breaches that the landlord alleges against the tenant regarding the size of the dog and the maintenance of the yard, justify bringing this tenancy to an end.

I therefore allow the tenant's application and set aside the landlord's Notice to End Tenancy dated April 02, 2012. As a result, the tenancy shall continue in accordance with its original terms.

The tenant would be wise to refrain from breaching the terms of the tenancy agreement. I find it timely to put the tenant on notice that, if such behaviours were to occur again in the future and another notice to end tenancy issued, the record of these events would form part of the landlord's case should it again come before a dispute resolution officer, for consideration.

Conclusion

The notice to end tenancy is set aside and the tenancy will continue.

Since the tenant has proven his case, he is entitled to the recovery of the filing fee of \$50.00. The tenant may make a onetime deduction of \$50.00 from a future rent.

The landlord must give the tenant at least 24 hours written notice prior to visiting the rental unit. The tenant is not permitted to use the basement to accommodate visitors without the written permission of the landlord.

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: April 27, 2012.

Residential Tenancy Branch