



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, MT

Introduction

This hearing was convened in response to an application by the Tenant pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

1. An Order Cancelling a Notice to End Tenancy - Section 47; and
2. An Order allowing more time to make an application to cancel the Notice to End Tenancy.

The Tenants and Landlords were each given full opportunity to be heard, to present evidence and to make submissions.

Issue(s) to be Decided

Is the Tenant allowed more time to make an application?

Is the Tenant entitled to an order cancelling the Notice to End Tenancy?

Background and Evidence

The tenancy began in October 2008. The tenancy agreement includes a pet agreement for one pet, a terrier.

The Landlord states that on February 27, 2011, the Tenant was served with a One Month Notice to End Tenancy for Cause (the “Notice”).

There is no dispute that the Notice lists the following causes:

1. The tenant or a person permitted on the property by the tenant has:
 - a. Significantly interfered with or unreasonably disturbed another occupant or the landlord;
 - b. Seriously jeopardized the health or safety or lawful right of another occupant or the landlord; and
2. The Tenant has breached a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.

The Tenant states that the Notice was received by her on March 5, 2012 and that the Notice was found on the deck of the unit. The Tenant states that she filed an application to dispute the Notice on March 5, 2012 but that she was never notified by

the Access Agency to pick up the documents and that when the Tenant finally contacted the Agency, the application had been cancelled. The Tenant filed another application on March 20, 2012 and requested an extension for filing the application.

The Landlord states that the Tenant was only provided permission for one dog and that at least one other dog was brought into the unit by the Tenant. The Landlord states that these dogs are allowed off leash and have been leaving feces in the park and other tenant's yards. The Landlord further states that one of the dogs, although tied up lunges at other people and that this dog has been off leash on occasion and scares other tenants. The Landlord states that while other tenants have complained, the Landlord has not filed these complaints as evidence as the one dog complained of is now gone.

The Landlord states that the dogs being off leash is a breach of a material term and points to section 7 of the tenancy agreement that states the pet clause is a material term. The Landlord states that the Tenant has been warned repeatedly since January 2010 about the dogs and that as of the date of the final notice, the dogs have not been removed.

The Tenant states that in August 2011, the Tenant obtained the Landlord's verbal agreement to have an additional dog, a collie. The Landlord does not dispute this agreement however, the Landlord states that this dog was not to be off leash and that the Tenant has left the dog off leash. It is noted that that section 7 of the tenancy agreement provides that permission for another pet is to be in writing.

The Tenant states that the dogs are not allowed off leash but that on one occasion in December 2011 or January 2012, the father of the Tenant let the dogs out of the unit and that these dogs got into another tenant's garbage. The Tenant states that at the time the Landlord told the Tenant that one neighbour was going to complain. The Tenant states that since this incident, the Landlord has been leaving numerous pieces of paper at the Tenant's unit telling the Tenant to remove the dogs. The Tenant states that it was not until after the Tenant informed the Landlord that the pieces of paper were not sufficient to provide notices to the Tenant, that the Landlord served the Final Notice dated February 9, 2012. This notice is noted to provide a date of February 18, 2012 to remove all dogs from the unit and a date of February 12, 2012 to pick up the dog feces in the Tenant's yard. The Landlord states that the Tenant complied with the deadline to remove the feces but did not remove the dogs. The Tenant states that all the neighbours have been spoken to by the Tenant and that none of these other tenants have any problems with the dogs.

The Tenant and Witness state that the second dog, the collie has been removed as of April 12, 2012. The Landlord states that they still wish to pursue the end of the tenancy and that the Landlord is only pursuing this due to the complaints of the other tenants.

Analysis

Where a tenant receives a notice to end tenancy for cause, the tenant has 10 days within which to file an application to dispute such a notice. Noting the first application date of the Tenant, I accept that the Tenant filed her application within the time allowed and therefore does not require more time. I therefore dismiss this part of the Tenant's application.

Where a Notice to End Tenancy comes under dispute, the landlord has the burden to prove, on a balance of probabilities, that the tenancy should end for the reason or reasons indicated on the Notice and that at least one reason must constitute sufficient cause for the Notice to be valid. Given the lack of evidence in the form of complaints from other tenants and that Landlord's statement that they are only pursuing the end of the tenancy due to the other tenants, I find that the Landlord has not substantiated on a balance of probabilities that the Tenant has significantly interfered with or unreasonably disturbed another tenant or the Landlord.

A material term of a tenancy agreement is a term 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. While it can be accepted that the clause in the tenancy agreement in relation to pets is stated to be a material term, given the length of time that the Landlord has been warning the Tenants about the dogs and the undisputed evidence that the Landlord orally agreed to the Tenant having a second dog despite the requirement for such permission to be in writing and after the date of the first complaint, I find that the Landlord has failed to establish that this clause is a material term. Even if it were to be a material term however, given the lack of corroborating evidence in relation to the dogs being off-leash, leaving feces in other tenants' yards or lunging at other tenants, I find that the Landlord has not substantiated, on a balance of probabilities, a breach of this term. Accordingly, I find that the Notice is invalid and that the Tenant is entitled to a cancellation of the Notice. The tenancy continues.

Conclusion

The Notice is cancelled and the tenancy continues.

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 17, 2012.

Residential Tenancy Branch