



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC FF

Introduction

This hearing dealt with an application by the tenants to cancel a notice to end tenancy for cause. The tenants and an agent for the landlord participated in the teleconference hearing.

At the outset of the hearing, each party confirmed that they had received the other party's evidence. Neither party raised any issues regarding service of the application or the evidence. I have reviewed all testimony and other evidence. However, only the evidence relevant to the issues and findings in this matter are described in this decision.

Issue(s) to be Decided

Is the notice to end tenancy valid?

Background and Evidence

Undisputed Facts

The tenancy began in July 1999. The landlord and one of the two tenants signed the tenancy agreement on June 17, 1999. The tenancy agreement contains a clause that states: "10. The Tenant covenants and agrees with the landlord... (h) That no animals or reptiles will be kept, sheltered or fed on or about the Premises. Fish, birds and small caged rodents, will only be permitted with the prior written approval of the Landlord."

On July 3, 1999, the landlord and the tenant carried out a move-in inspection and completed a condition inspection report. On that report, the tenant initialled that she agreed to the "no pet" clause.

In 2004, the landlord allowed tenants to enter into an agreement with the landlord to amend their tenancy to allow a wider range of pets. The tenants in this matter did not enter into any written agreement with the landlord to amend their tenancy agreement.

In August 2012 the landlord became aware that the tenants had acquired a Rottweiler puppy. The tenants had not obtained permission from the landlord prior to obtaining the puppy. On September 28, 2012, the landlord sent the tenants a letter informing them that the landlord's written policy was that Rottweilers were not permitted, and the tenants would not be permitted to keep the puppy. On October 22, 2012, the tenants served the landlord a letter stating that they were not prepared to let the puppy go.

On October 25, 2012, the landlord served the tenants with a notice to end tenancy for cause. The notice indicates that the reason for ending the tenancy is that the tenants breached a material term of the tenancy agreement and did not correct the breach within a reasonable time after written notice to do so.

Landlord's Submissions

The tenants are bound by the "no pets" clause of their tenancy agreement. The landlord's written policy specifically excludes Rottweilers as permissible pets. The landlord has an obligation to enforce their policies consistently and without bias or prejudice.

In the hearing, the landlord orally requested an order of possession, and stated that they would be willing to extend the effective date of the order of possession to January 31, 2013.

Tenants' Submissions

The tenants did not ever receive the landlord's letter allowing tenants to amend the pet policy in their tenancy agreement. The tenants have lived in the rental unit for several years, and they feel that they should be "grandfathered" in to the pet policy amendment. The tenants are responsible pet owners, and they plan to give the puppy proper training. The landlord has breached their own policy in the rental complex by allowing several other tenants to have dogs that are over 40 pounds. The tenants feel that they are being targeted because they were successful in a previous dispute resolution with the landlord.

Analysis

I find that the notice to end tenancy is valid.

I find that the tenants are bound by the “pet” clause in their tenancy agreement. I furthermore find that the term is a material term, as tenants must gain written permission from the landlord for any pets, and the landlord may determine that any pet is not acceptable. Even if the tenants had signed the amendment to the pet clause, they would have breached that term firstly by not seeking written permission of the landlord and secondly by obtaining a pet that was specifically not permitted.

The tenants did not provide sufficient evidence that there was an implied waiver of the pet term in their tenancy agreement. If the tenant had shown that the landlord consistently and repeatedly breached the same term as in the tenants’ agreement, I may have found an implied waiver of the term. However, based on the evidence before me, I could not find that to be so in this case.

The landlord orally requested an order of possession. Having found that the notice to end tenancy is valid, I therefore must grant the order of possession. The landlord stated that they would extend the effective date of the order to January 31, 2013. Accordingly, I so order. As the tenants were not successful in their application, they are not entitled to recovery of the filing fee for the cost of their application.

Conclusion

The tenants’ application is dismissed.

I grant the landlord an order of possession effective January 31, 2013. The tenants must be served with the order of possession. Should the tenants 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.

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: December 3, 2012.

Residential Tenancy Branch