



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 was convened by way of conference call concerning an application made by the tenant for an order cancelling a notice to end tenancy for cause; for an order that the landlord comply with the *Act*, regulation or tenancy agreement; and to recover the filing fee from the landlord for the cost of the application.

The tenant and the landlord attended the conference call hearing, each gave affirmed testimony, and the tenant provided evidentiary material prior to the commencement of the hearing. Part of the tenant's evidence material included a USB stick, but the landlord's copy was blank. The landlord's spouse also attended the hearing and gave affirmed testimony. The parties were given the opportunity to cross examine each other on the evidence and testimony provided, all of which has been reviewed and is considered in this Decision with the exception of the USB stick containing evidence that the landlord was unable to access.

Issue(s) to be Decided

Is the tenant entitled to an order cancelling a notice to end tenancy for cause?
Has the tenant established a claim for an order that the landlord comply with the *Act*, regulation or tenancy agreement?

Background and Evidence

The landlord testified that this month-to-month tenancy began on September 1, 2011 and the tenant still resides in the rental unit, which consists of a house and acreage. Rent in the amount of \$1,600.00 per month is payable in advance on the 1st day of each month and there are no rental arrears. An additional \$400.00 per month is payable for pasture and the rent for that portion was free for the first 4 months of the tenancy, bringing the total current rent including the pasture to \$2,000.00 per month after the first 4 months. On August 29, 2011 the landlord collected a security deposit from the tenant in the amount of \$1,000.00 which is still held in trust by the landlord. No written tenancy agreement was signed by the parties and the landlord testified that the original tenant with whom the landlord made the verbal tenancy agreement is no longer resident in the

rental unit. The tenants were a couple and the original tenant has moved out leaving the common-law spouse a tenant who is the applicant in these proceedings and has been paying rent.

On April 18, 2013 the landlord caused the tenant to be served with a 1 Month Notice to End tenancy for Cause. A copy of the notice was provided by the tenant for this hearing. The landlord's realtor served the notice personally on the tenant on April 18, 2013 and the notice contains an expected date of vacancy of May 31, 2013. The reasons for issuing the notice are:

- Tenant has allowed an unreasonable number of occupants in the unit/site;
- Tenant or a person permitted on the property by the tenant has:
 - Significantly interfered with or unreasonably disturbed another occupant or the landlord;
 - Seriously jeopardized the health or safety or lawful right of another occupant or the landlord;
 - Put the landlord's property at significant risk;
- Tenant has caused extraordinary damage to the unit/site or property/park;
- Tenant has not done required repairs of damage to the unit/site; and
- Tenant has assigned or sublet the rental unit/site without landlord's written consent.

The landlord testified that the first reason refers to the number of dogs the tenant has in the rental unit and on the property. The tenant is running a dog kennel and the dogs are often in the house. At any given time there can be up to 12 dogs inside the house.

The second reason for issuing the notice to end tenancy refers to a letter that the landlord received from the tenant's lawyer threatening to apply to the court for a restraining order against the landlord on behalf of the tenant if the landlord has any further contact with the tenant's new roommate. A copy of that letter was also provided by the tenant for this hearing. The letter is dated April 29, 2013 and is not contained on any letterhead.

The landlord further testified that the tenant has significantly interfered with or unreasonably disturbed the landlord by bolting both gates to the rental house shut so the landlord is unable to enter the yard. The landlord attempted to fix broken sprinklers but was not able to. Further, the landlord has no insurance for a kennel and it's not licensed. The tenant is a licensed dog-walker but not licensed for a kennel.

The next reason for issuing the notice, respecting seriously jeopardizing the health or safety or lawful right of another occupant or the landlord refers to the fact that any of the dogs can get out and the landlord is concerned about liability issues.

Also, the grass is destroyed; a stainless steel kennel has been erected around a nice tree as well as one in the mechanical room. There are scratches in the cherry wood floors inside the rental unit as well as on the doors. The floors were a high gloss finish

and are now destroyed. The outdoor carpeting on the patio is also destroyed. The tenant's 3 horses have chewed the fences and most of the willow trees are dead. Sprinkler heads are still broken and shrubs are dead. The tenant has never used the weed-eater and the house is for sale and cannot be shown in this condition. Repairs are required, there is no general upkeep, and the floors are the landlord's biggest concern, although the landlord is very disturbed about the condition of the property as is the landlord's realtor. The realtor commented on the dog smell as soon as one walks into the house.

The landlord's property is at significant risk, damages have not been repaired, and the tenant has a roommate that was not approved of by the landlord. While attending at the rental unit, the landlord has been met by 6 dogs, 2 of them pit-bulls as well as a bolted gate even after giving the tenant 24 hours notice. The landlord did not know that the dogs were in the house until a couple of months ago.

The landlord's spouse testified that the tenant has an advertisement on Facebook for dog-sitting for overnight, daily and weekly rates, and the photograph in the advertisement shows the tenant with 12 dogs on the landlord's property.

The tenant testified that it is not a kennel. The tenant spoke to the landlord about dog walking and boarding, so this is not new to the landlord.

The tenant also testified that the shrubs were in bad shape when the tenant moved onto the rental property and the trees were already killed by the cows of previous tenants. The dogs are never loose. Further, the landlord recently removed the tools for lawn mowing that were on the property at the commencement of the tenancy.

The landlord's moods change and his reaction to the tenant changes with the moods from blowing a situation out of proportion to being a pleasant neighbour. The landlord resides in another city but still has a place on the rental property which is used occasionally. The landlord has also "harassed" the tenant and the tenant's roommate when seen on the property. The tenant testified that the landlord has breached the tenant's right to quiet enjoyment and the tenant requests an order that the landlord comply with the *Act*.

The tenant also testified that insurance has been obtained, and the landlord is not at risk with respect to liability for the dog business.

Analysis

I have reviewed the notice to end tenancy issued by the landlord, and I find that it is in the correct form and contains sufficient information as required by the *Act*.

With respect to the reasons for issuing the notice, I do not believe that the legislation contemplated dogs as being occupants, and I find that the landlord has not established that the tenant has allowed an unreasonable number of occupants in the unit or site.

The landlord testified that the tenant's lawyer sent a letter that disturbed the landlord, however, I don't take that as an unreasonable disturbance. Firstly, I am not satisfied that it was actually written by a lawyer in that it is not contained on any letterhead, and even if it were, a person has a right to apply for a restraining order if one feels it necessary. It would be up to the Court to determine whether a restraining order is warranted. Further, the letter is dated after the issuance of the notice to end tenancy.

I further find that the landlord has failed to establish that the tenant has seriously jeopardized the health or safety or lawful right of another occupant or the landlord. The landlord testified that the landlord is unable to enter the yard to fix broken sprinklers, but the testimony of the parties is that the storage shed off the master bedroom is a common area. If the landlord wishes to enter any other area of the rental property that is not considered common area to complete repairs, the landlord is required to give a tenant at least 24 hours written notice to do so.

I also question how the landlord is concerned that the property is put at significant risk by the tenant. The landlord spoke of liability issues; that any dog can get out, the grass is destroyed, a stainless steel kennel has been erected around a tree, and scratches on the doors and floors. The landlord has insurance, and so does the tenant, but neither party has proven what insurance policies are in place. Where a tenant disputes a notice to end tenancy, the onus is on the landlord to establish the reasons for issuing it. The tenant disputes that the floors are damaged. The landlord has provided no evidence and therefore I find that the landlord has failed to establish that the tenant has put the property at significant risk or has caused extraordinary damage.

The landlord testified that the tenant has failed to ensure general upkeep of the property, and that the floors are the biggest concern. The *Residential Tenancy Act* requires a tenant to repair any damage caused by the tenant before moving out of the rental unit, and the tenant will be expected to do so at the end of this tenancy.

In the circumstances, I would be concerned about 5 to 12 dogs being inside a rental unit, and I am not satisfied with respect to the tenant's testimony that the house is spotless. However, the tenant is responsible for correcting any issues prior to ending the tenancy. I find that the landlord knew of the tenant's dog business prior, and I find that the landlord is now concerned because the property is for sale. I find that the landlord has failed to establish that the tenant ought to be removed from the property now that the property is for sale.

With respect to the tenant's application for an order that the landlord comply with the *Act*, regulation or tenancy agreement, a landlord is required to provide a tenant with quiet enjoyment of a rental property. I order the landlord to comply.

Since the tenant has been successful with the application, the tenant is also entitled to recover the \$50.00 filing fee for the cost of the application, and I order that the tenant be permitted to deduct \$50.00 from a future month of rent.

Conclusion

For the reasons set out above, the 1 Month Notice to End Tenancy for Cause issued by the landlord on April 18, 2013 is hereby cancelled.

I further order the landlord to comply with the *Residential Tenancy Act* by respecting the tenant's right to quiet enjoyment; and providing the tenant with not less than 24 hours written notice to enter the rental property except for common areas.

I further order the tenant be permitted to deduct \$50.00 from a future month's rent payable under the tenancy agreement.

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: May 23, 2013

Residential Tenancy Branch

