



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Bayside Property Services
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC

Introduction

This was a hearing with respect to the tenant's application to dispute a one month Notice to End Tenancy for cause. The hearing was conducted by conference call. The tenant and the landlord's representatives called into the hearing. During the hearing I heard evidence from the parties and from their witnesses.

Issue(s) to be Decided

Should the Notice to End Tenancy dated August 15, 2013 be cancelled?

Background and Evidence

The rental unit is an apartment in the landlord's apartment complex in Langley. There was a previous hearing with respect to an application by the tenant to cancel a one month Notice to End Tenancy for cause. As set out in the decision dated April 11, 2013, the matter was settled by the parties and the terms of the settlement were recorded in the decision. They provided as follows:

1. The tenant committed to advise her daughter not to bring any dog onto the rental property.
2. The tenant agreed that she would not allow her daughter to bring any dog to the tenant's rental unit and further committed to refrain from allowing any dog to access the tenant's rental unit.
3. The tenant agreed to provide a copy of her receipt for payment of her pet damage deposit to the landlord's building manager (KT) by 10:00 a.m. on Monday, April 15, 2013.
4. The landlord agreed to cancel the 1 Month Notice to End Tenancy for Cause issued on March 9, 2013.
5. The landlord agreed to allow the tenant to keep her existing cats in her rental unit.

6. Both parties agreed that the terms of their settlement agreement as outlined above constituted a final and binding resolution of all issues in dispute arising out the tenant's application and this tenancy at this time.

The landlord served the tenant with another one month Notice to End Tenancy dated August 15, 2013. The Notice required the tenant to move out of the rental unit by September 30, 2013. The grounds alleged by the Notice to End Tenancy were that the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord; that the tenant has seriously jeopardized the health or safety or lawful right of another occupant or the landlord and that the tenant breached a material term of the tenancy agreement.

The landlord provided testimony from its assistant manager and statements from several occupants of units at the rental property concerning the grounds for issuing a Notice to End Tenancy for cause. The landlord's evidence is that the Notice to End Tenancy was issued after an incident on August 14, 2013 that was observed by the assistant manager and other occupants. The manager observed a vehicle speeding on the private roadway in the housing complex. She was told by an occupant that it was the tenant's foster daughter and that it was not the first occasion she had been observed driving at excessive speeds on the grounds of the rental property. The assistant manager testified that she stepped out into the road and motioned to the driver to slow down. She said that rather than merely slowing down, the driver came to a screeching halt, rolled down her window and proceeded to yell and swear at her. According to the manager when she was cautioned that her driving and her verbal behaviour would not be tolerated in the complex the driver replied that she was just visiting and did not have to abide by any of her rules. The manager noticed that there was a pit bull dog in the back of the vehicle. She asked about the dog because she was aware that it had been a term of the agreement settling the previous arbitration that the tenant would not allow her daughter to bring any dog onto the rental property. After she questioned the driver about the dog told her to "F*** Off" and accelerated her vehicle so that it spun its wheels and fish tailed, nearly hitting the manager, then almost failed to negotiate the corner exiting the complex.

The assistant manager then went to the rental unit to speak to the tenant. She said the tenant was intoxicated and incapable of having a coherent conversation. A man she believed to be the tenant's common law husband appeared and moved the tenant out of the way. She testified that the husband confirmed that it was the tenant's daughter who was driving the vehicle and that the fact the daughter brought her dog onto the property had been the source of an argument between him and the tenant. The assistant

manager testified that the tenant reappeared and said that there was no dog and that she, the assistant manager was: "out to get her".

The landlord submitted written statements from three other occupants confirming the testimony of the assistant manager. Two of the occupants said in their statements that the tenant's daughter had brought her pit bull to the rental unit on a number of occasions. According to the landlord and several of the witness, the daughter's dog was prohibited from being on the rental property because it is aggressive and dangerous. The author of one of the statements confirmed that she saw a pit bull in the back of the daughter's vehicle on August 14th. I heard evidence from two occupants who confirmed the evidence contained in their statements; one witness said that she has seen the pit bull in the rental unit on several occasions.

One of the landlord's witnesses, an occupant of the rental property who provided a written statement, complained that after the tenant was served with an eviction notice, the tenant has been spreading malicious gossip about her and about her children and has claimed that she is conspiring with the landlord in an effort to have the tenant evicted. The witness said that the tenant has been attempting to collect signatures from other occupants to support her quest to have her evicted.

I received written statements from the tenant and I heard testimony from the tenant and her witnesses. The tenant testified that she has not had a dog at the rental unit since the decision was made in April concerning the previous dispute resolution proceeding. The tenant contended that the landlord was improperly siding with other occupants of the rental complex and taking steps to evict her based on the false testimony of other occupants who are the friends of the assistant manager. The tenant also alleged that the landlord was motivated to evict her so that they could renovate the rental unit and re-rent it for a higher rent. The tenant also testified that her daughter's dog could not have been on the property in August because it died in July.

The tenant submitted a written statement from her daughter. In the statement she said that:

My dog has never been in or on any of the property in question, since the last time there was an agreement made with them. I have since been there myself a few times. The last time a woman stopped me when I was leaving without identifying herself and proceeded to question me and search my car. I felt very threatened and left as fast as I could. I found out afterward she was indeed the new assistant manager. She claims that day she stopped me that I had my dog. I did not and this is an unfounded claim with no proof whatsoever.

Later in her statement she said that "My dog (reg#) is living currently to (address) Langley."

The tenant's witness Ms. S. R. Testified that she was at the property on August 14th and there was no dog present at the tenants' home or in the daughter's vehicle. Another witness testified that she was a former caretaker. She said that during the time she was at the property she did not see at the tenant's rental unit. She said that there were no problems with the tenant's children, contrary to accusations that her children play in and around the dumpsters on the rental property.

Ms. C.S. a former resident manager who is no longer employed by the landlord, lived at the rental property, but she moved out on September 8, 2013. She said that during her employment with the landlord she was not aware of any problem with the tenant. She testified that the tenant had two cats, but did not have any dogs of her own. She said that the tenant used to walk her dogs and Ms. C.S. paid the tenant for that service, but after the dispute resolution proceeding in April, the tenant was unable to continue walking the dogs because of concerns that the landlord would accuse her of violating the prohibition against keeping dogs. She said that the landlord previously tried to evict the tenant for having a dog and that the landlord has given other tenants Notices because they had dogs.

Analysis

I do not accept the tenant's submissions that the landlord is motivated to end her tenancy solely out of a desire to raise the rent for her unit. If that was the landlord's motivation for ending her tenancy then it would have been unlikely to have agreed to a settlement of the previous arbitration that was based on an agreement to continue the tenancy.

The landlord's witnesses testified that a dog belonging to the tenant's daughter, also referred to as her foster daughter has been on the property on numerous occasions since April. I accept that evidence as accurate and I accept as accurate the testimony of the landlord's assistant manager concerning the events that took place on August 14, 2013. I find that the tenant's daughter was at the rental property with her pit bull and I find that she drove recklessly on the grounds of the rental property and acted belligerently towards the assistant manager when she confronted her. I find that the tenant breached the settlement agreement set out above by allowing her daughter as an invitee or guest to bring her dog onto the rental property. The tenant's daughter was not called to give evidence at the hearing and I prefer the evidence of the witnesses for

the landlord who testified at the hearing to the written statement from the tenant's daughter denying that her dog has been on the rental property.

The tenant testified that her daughter's dog has not been on the property or at her rental unit since the decision was made in April. She testified that this was so because her daughter's dog died in July and therefore could not have been on the property thereafter. I did not find the tenant's testimony with respect to the dog to be credible, because it was contradicted by her daughter's written statement submitted after the August 14th incident. In that statement the daughter confirmed that she still has a dog, contradicting the tenant's statement about the death of what she implied was her daughter's only dog. The tenant's testimony was also contradicted by the evidence of other witnesses who said that they observed the dog at the rental unit on several occasions after the April settlement agreement. I find that the terms of the settlement agreement amount to material terms of the tenancy agreement and that the tenant was on notice that a breach of those terms would not be tolerated; the tenant explicitly agreed to those provisions.

The tenant is responsible for the conduct of her invitees and guests when they are at the rental property. I find that the landlord had sufficient grounds to justify serving the one month Notice to End Tenancy on August 15, 2015. The presence of the dog and the unacceptable and reckless conduct of the tenant's daughter constitute sufficient grounds to uphold the Notice to End Tenancy. I note as well that the evidence of both the tenant's witnesses and the witnesses for the landlord show that there is a toxic relationship between the tenant and other residents in the rental complex. I decline to cancel the Notice to End Tenancy. The tenant's application to cancel the Notice is dismissed without leave to reapply.

Conclusion

Section 55 of the *Residential Tenancy Act* provides as follows:

- 55** (1) If a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, the director must grant an order of possession of the rental unit to the landlord if, at the time scheduled for the hearing,
- (a) the landlord makes an oral request for an order of possession, and

(b) the director dismisses the tenant's application or upholds the landlord's notice.

I have dismissed the tenants' application to dispute the landlord's Notice to End Tenancy. The landlord made an oral request for an order of possession at the hearing. The effective date of the Notice to End Tenancy was September 30, 2013, however I find that the tenant should be allowed until the end of October to relocate to other accommodation. Pursuant to section 55 I grant the landlord an order for possession effective October 31, 2013 after service upon the tenant. This order may be filed in the Supreme Court 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: October 18, 2013

Residential Tenancy Branch

