



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding NACEL PROPERTIES LTD
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPB
 CNC

Introduction

This hearing dealt with cross Applications for Dispute Resolution filed by both the Landlord and the Tenant. The Landlord filed their application on October 10, 2013 seeking an Order of Possession for breach of an agreement. The Tenant filed his application on October 3, 2013, seeking an Order to cancel a Notice to end tenancy issued for cause.

The parties appeared at the teleconference hearing and gave affirmed testimony. The Tenant confirmed receipt of the Landlord's evidence; however, the Agent denied receiving any of the Tenant's evidence.

Section 3.1 and 4.1 of the *Residential Tenancy Branch Rules of Procedure* stipulates how evidence is to be served upon the other party. Considering evidence that has not been served on the other party would create prejudice and constitute a breach of the principles of natural justice. Therefore, as the Landlords have not received copies of the Tenant's documentary evidence I find that evidence cannot be considered in my decision. I did however consider the testimony provided by the Tenant and his Witness.

At the outset of the hearing I explained how the hearing would proceed and the expectations for conduct during the hearing, in accordance with the Rules of Procedure. Each party was provided an opportunity to ask questions about the process however, each declined and acknowledged that they understood how the conference would proceed.

On a procedural note, at 10:04 a.m., 34 minutes into the proceeding, the Agent began very upset and began yelling and screaming at me. I requested that she calm down and when that failed I instructed the Landlord to remove the Agent from her room. The telephone line went quiet and I instructed the Landlord a second time to have the Agent leave the room. The Agent remained in the room until I told the Landlord that I would disconnect her from the hearing if the Agent did not leave. Once the Agent left I reminded the Landlord of Rule # 8 of the Rules of Procedure which stipulate proper

conduct during a dispute resolution hearing and I explained that the Agent was banned from the remained of this proceeding.

During the hearing each party was given the opportunity to provide their evidence orally, respond to each other's testimony, and to provide closing remarks. A summary of the testimony is provided below and includes only that which is relevant to the matters before me.

Issue(s) to be Decided

- 1) Should the 1 Month Notice to end tenancy for cause issued September 26, 2013, be upheld or cancelled?
- 2) Should the Landlord be granted an Order of Possession for breach of agreement?

Background and Evidence

The parties confirmed they entered into a written month to month tenancy that began on May 1, 2013. Rent is payable on the first of each month in the amount of \$900.00 and a security deposit of \$450.00 was paid by the Tenant. On September 26, 2013, the Tenant was served with a 1 Month Notice to end tenancy for Cause when it was posted to his door.

At the outset of this proceeding the Landlord advised that two very traumatic events occurred when two separate tenants were murdered in their building this past summer. The murders occurred fifteen days apart. She noted that as a result of the traumatic events their Agent was suffering from post traumatic stress syndrome; however, she was fine now and would be providing testimony in this case.

The Landlord testified that she has managed this building off and on for about one year. The Landlord pointed to the tenancy agreement they provided in evidence and argued that the Tenant initialed the tenancy agreement on the back page agreeing to their "no pet" policy. She noted that it is a carbonless paper type of document so that when they turn the pages over and initial on the back page the writing does not transfer through to all copies.

The Agent is responsible for showing prospective tenants the units, completing the applications for rentals, conducting reference and credit checks, and entering into the tenancy agreement. In this case the Agent was absent so the janitor showed the Tenant the unit and managed collecting all the paperwork. He passed it onto the Agent to finalize.

The Landlord stated that after the traumatic events of July and August they began doing inspections of the units in this building to speak with tenants about the incidents and take note of who was in the building. On either September 3rd or 4th they were scheduled to inspect the Tenant's unit. They had seen him in the hallway with a large dog and requested that they inspect his unit so he could go about his day. They rode in the elevator up to the Tenant's floor with him and his dog, which she believed to be a Pit Bull. The dog was barking so the Landlord requested that the Tenant put his dog in the bedroom so they could conduct the inspection, but he refused. She also requested that he be put on a lease and he refused to do that as well. She said she was too afraid to enter the building so the janitor conducted the inspection himself. She questioned why the dog was in the unit as the Tenant had signed the tenancy agreement and initialed the "no pet" section. She spoke with Agent about this dog and she indicated she did not know about the dog until late summer when she seen him outside with the Tenant.

The Agent testified that shortly after the traumatic events she saw the Tenant outside in the evening and he was not wearing pants or a shirt. She stated that it was dark and she was afraid because at first, she did not know who he was or what he was doing. She said that when she approached the building she saw who it was and he appeared to be out walking his dog. She was going to speak to him about the dog and wearing clothes but everything had been very disruptive after the traumatic events. The Agent argued that that evening was the first time she had ever seen the Tenant with that big dog. He resides on the sixth floor that has an exterior door and access to a patio which she believes he had been exiting with his dog.

The Landlord submitted that after her inspection she contacted the Tenant's worker and had several conversations about the dog. Then on September 25, 2013 she heard reports that the dog was riding in the elevator alone and was walking the hallways unattended. She called the Tenant's worker again and gave him two choices: (1) the Tenant stays but he does not keep the dog or (2) they both move to a different location.

The Agent testified that there are other animals in this building. She indicated that there were about five other dogs, all of which are small breeds. Some tenants have cats, maybe four or five. She began to get upset when I asked if the Tenant has ever been issued a warning to keep the dog on a lease. At this point she yelled at me that the first time she had seen the dog was before the traumatic events.

The Tenant testified that he had the dog with him when he was first shown the rental unit by the janitor. He argued that the janitor was playing with his dog while he was inspecting the unit. He also stated that the Agent has seen his dog on many occasions

when he walking in the front door of the building and she never said anything about it in the past.

The Tenant's Witness testified that he is the Tenant's worker. He attends the building almost every other day and meets with the Tenant. He said the Tenant has owned the dog for five years and has had the dog living with him in that unit since the beginning of his tenancy on May 1, 2013. He has seen upwards of 15 to 20 dogs who reside in this building not 4 or 5 as stated by the Agent. He stated that the Agent called him and spoke about the day she saw the Tenant outside without his clothes on. He clarified that it was a hot summer night and the Tenant was outside in his boxer shorts, as if they were summer shorts. He said that during that conversation the Agent called the Tenant a derogatory name and demanded that he "move out of the building". He informed the Agent they would need to deal with this through the *Residential Tenancy Branch*.

At this point in the hearing the Agent became very upset and was instructed to leave the room. The Landlord argued that the dog had attacked two small children and that they submitted a written letter about that in their evidence. She also pointed to their evidence which included the municipal dog by-law which stipulates that the dangerous breed of dog must be kept on a leash at all times. She is of the opinion that given the circumstances the Tenant has breached his tenancy agreement and therefore they did not have to issue him a written warning prior to evicting him, even though the *Residential Tenancy Branch* instructed her to do so. She also stated that if a written warning was required, she would simply serve him a written warning tomorrow and another eviction notice.

In closing, the Tenant argued that there is not a "no pet policy" and that having his dog is not a breach of a material term of his tenancy. There were no warnings issued stating he had to keep his dog on a leash. There were no illegal activities and his dog is not a Pit Bull it is a Shar Pei.

Given the volatile nature displayed by the Agent and Landlord during this proceeding, I cautioned the Landlord that they are responsible for their actions. I also cautioned the Landlord that under section 95(2) of the Act, any person who coerces, threatens, intimidates or harasses a tenant from making an application under the Act, or for seeking or obtaining a remedy under the Act, may be found to have committed an offence and is subject to a fine or administrative penalty.

I gave the Tenant a verbal Order to make sure that he has his dog on a leash at all times when he is outside of his rental unit. Furthermore, he was instructed to have the

dog on a leash and held whenever there was an inspection or maintenance work being performed on his unit.

Analysis

Upon review of the 1 Month Notice to End Tenancy, I find the Notice to be completed in accordance with the requirements of section 52 of the Act and I find that it was served upon the Tenant in a manner that complies with section 89 of the Act.

The Notice was issued pursuant to Section 47(1) of the Act for the following reasons:

- Tenant has engaged in illegal activity that has or is likely to
 - Adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant or the landlord
- Breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.

When considering a 1 Month Notice to End Tenancy for Cause the Landlord has the burden to provide sufficient evidence to establish the reasons for issuing the Notice to End Tenancy.

Upon review of the above, I find there is insufficient evidence to prove the Tenant has engaged in illegal activity. While there is a statement that the Tenant's dog barked at two young children, there is no evidence to prove the dog attacked these children. While the Tenant has admitted to having a large dog, the evidence regarding the type of breed is disputed. Accordingly, I dismiss the Notice on the grounds that the Tenant has engaged in illegal activity that has or is likely to adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant or the landlord.

The Landlord pointed to clause 18 of the tenancy agreement which indicates no pets are allowed and argued that this is a material term that the Tenant has breached by having a large dog.

A material term is a term written into the tenancy agreement 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.

In this case, I favor the Tenant's evidence over the Landlord's relating to when the Agent first knew about the presence of the Tenant's dog. I favor the Tenant's evidence over the Landlord's because it was forthright and credible. The Agent began her testimony claiming she did not know of the dog until the evening she saw the Tenant

outside in his underwear with the dog. She later contradicted her testimony when she said she had seen the dog prior to the traumatic events. After considering the Agent's contradictory testimony, I find the Tenant's evidence that the Agent has known about the dog since the beginning of his tenancy to be plausible given the circumstances presented to me during the hearing.

Based on the above, and the evidence that there are numerous dogs in this building, I do not accept that the Landlord has a no pet policy which the Tenant has breached. Therefore, I find there to be insufficient evidence to prove the Tenant breached a material term of his tenancy. Accordingly, I uphold the Tenant's request to cancel the 1 Month Notice.

As per the foregoing, I find there is insufficient evidence to prove the Tenant has breached an agreement with the Landlord. Accordingly, I dismiss their request for an Order of Possession, without leave to reapply.

Conclusion

I HEREBY CANCEL the 1 Month Notice to end tenancy issued for Cause on September 26, 2013. The Notice is of no force or effect.

The Tenant is HEREBY Ordered to have his dog leashed at all times when he is outside of his rental unit and leashed and held during all inspections and maintenance work in his unit.

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: November 19, 2013

Residential Tenancy Branch

