



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Parksville Lions Housing Society
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC

Introduction

This hearing dealt with an application by the tenant for an order setting aside a 1 Month Notice to End Tenancy for Cause dated June 26, 2014. Both parties appeared and had an opportunity to be heard.

Issue(s) to be Decided

Does the landlord have cause, within the meaning of the legislation, to end this tenancy?

Background and Evidence

The rental unit is town house with a small back patio. There are partial walls on each side of the patio separating it from the patios of the townhouses on either side of the rental unit.

The townhouse complex in which the rental unit is located is owned by B C Housing and operated by the landlord, a non-profit housing society. The housing is intended for lower income families.

The tenant lives in the unit with her three children, aged eight, five and three. Her month-to-month tenancy commenced May 15, 2013. Her portion of the rent is \$436.00 per month, payable on the first day of the month. The balance of her rent is paid by a housing subsidy from B C Housing.

The tenant wanted to build a small fence around her patio to keep her children from wandering off. She looked at the tenancy agreement and did not see anything about fences. She also observed that several other units had fences so she concluded that a fence would be allowed.

In the middle of May she and a friend built a fence across the back of the patio, from one partial wall to the other, out of unpainted wooden pallets. The next day she received a handwritten note from the landlord advising her that the fence was not permitted and asking her to take it down. This was followed up by an e-mail to the tenant from the landlord again advising her that any type of fence or structure out back is not allowed and asking her to take it down as soon as possible.

The tenant's friend went to the municipal office and ascertained that there was no bylaw prohibiting fences. The tenant did not take the fence down.

On May 27 the landlord sent the tenant another letter asking her to take the fence down as soon as possible. On the same day the tenant also received a letter advising that an inspection of her unit would be conducted on June 3. She decided not to take any action until she had a chance to talk to the landlord during the inspection.

On June 3 the tenant demanded the reasons for the landlord's request. She did not feel she received an adequate explanation. The tenant described the meeting as becoming very heated, very quickly.

On June 5 the landlord sent the tenant another letter advising her that maintenance personnel would be coming by the unit to remove the fence.

On June 16 the maintenance man, who is known to the tenant, arrived at the rental unit. He told the tenant that his instructions were that if she did not allow him to remove the fence he was to call the police. She told him to call the police. The police attended. They explained to the tenant that it was not the municipal bylaw that governed the situation, it was the tenancy agreement. The tenant also spoke to the landlord who advised her that she had to take down the existing structure and apply for permission for a fence. The tenant said she would.

The tenant and her friend altered the fence by adding little feet thereby turning the same pallets into free standing barriers, unattached to the building.

The tenant did not apply for permission nor did she take down the barriers. On June 26 the landlord issued and served a 1 Month Notice to End Tenancy for Cause on the grounds that the tenant had breached a material term of a tenancy agreement and had not corrected the breach within a reasonable time after written notice to do so. The effective date of the notice was July 31.

The tenant's position is that she has complied with the tenancy agreement because the structure is not a fence attached to the building but a free-standing structure that she puts away every night. This is also the reason why she has not applied for permission for a fence.

The tenant also argues that other units have fences – in fact, one was erected just a week and a half ago – and the landlord's actions are unfair.

The landlord testified that about a year ago the board passed a motion that no more fences would be allowed. When they have granted approval in the past the approval has included conditions about materials, height and appearance. Because the tenant has not made an application to the board for permission for her fence she did not know what the outcome of that application might be.

Analysis

The relevant section of the tenancy agreement is:

“25. Alterations of Premises

Tenants must obtain the prior written approval of the landlord to do the following . . . place on or affix any radio, satellite or television equipment or any other object whatsoever to the outside of the rental unit or the residential property.” (emphasis added)

“Residential property” is defined in the agreement as:

- A) a building, or related group of buildings, in which one or more rental units or common areas are located,
- B) the parcel or parcels on which the building, related group of buildings or common areas are located,
- C) the rental unit and common areas, and
- D) any other structure located on the parcel or parcels.”

At first the tenant relied on her reading of the tenancy agreement. When she did not see the word “fence” she concluded that there were no restrictions on putting up fences. She was wrong, because she did not understand that “any other object whatsoever” would include fences.

Then the tenant relied on the fact that the municipal bylaw did not restrict the construction of a fence. She was wrong, because she did not understand that she had to comply with the tenancy agreement as well as the municipal bylaws.

Now the tenant relies on the fact that the attached fence has been changed to a freestanding barricade in support of her position that she is not required to obtain the landlord's prior approval for it. Once again, she is wrong. "Any other object whatsoever" includes wooden barriers that are several feet long and "place on . . . the outside of the rental unit or residential property" includes setting objects on the patio and the adjacent common area.

Finally the tenant argues that the other units have fences so she should be allowed one too. The landlord's action is only unfair if the other tenants have not applied in advance and obtained the landlord's written consent to their structures. There is no evidence the other tenants did not comply with their tenancy agreement. There is evidence that the tenant did not.

I find that the tenant did breach a material term of the tenancy agreement and did not correct the breach within a reasonable time after notice to do so.

However, the landlord accepted the August 1 rent without giving the tenant a receipt or any other notice in writing that the rental was being accepted for use and occupation only.

As explained in *Residential Tenancy Fact Sheet 124: Re-instatement of Tenancies*:

"Where a landlord has served the tenant with a One-Month Notice to End Tenancy, and then accepts a rent payment for the month after the tenancy was to end, the landlord should clarify with the tenant whether they have reinstated the tenancy.

When a landlord does not want the tenancy to continue, the landlord should:

1. Specifically tell the tenant that the rental payment is being accepted for the use and occupancy only and does not reinstate the tenancy; and,
2. Tell the tenant that they must move out, as required by the Notice to End Tenancy."

By accepting the rent without clearly advising the tenant that the payment was being accepted for use and occupancy only the landlord has reinstated the tenancy. The tenancy continues until ended in accordance with the *Residential Tenancy Act*.

This tenancy is continuing only because the landlord made a technical error. Hopefully the tenant take will the information in this decision seriously and take steps to comply with her tenancy agreement.

Conclusion

The tenancy is continued for the reasons set out above.

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: August 28, 2014

Residential Tenancy Branch

