



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC

Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution (the “Application”) made by the Tenant to cancel a 1 Month Notice to End Tenancy for Cause (the “Notice”).

The Landlord appeared for the hearing with an agent who presented the Landlord’s evidence and provided submissions throughout the hearing. The Landlord also made available the park manager for the hearing and called a witness to provide affirmed testimony. The Tenant also appeared for the hearing and provided affirmed testimony.

The Landlord’s agent confirmed that he had received the Tenant’s Application and evidence by registered mail pursuant to Section 82(1) (c) of the *Manufactured Home Park Tenancy Act* (the “Act”). The Tenant confirmed receipt of the Landlord’s documentary evidence served to him prior to the hearing.

The hearing process was explained to the parties and they had no questions about the proceedings. Both parties were given a full opportunity to present their evidence, make submissions to me, and cross examine the other party on the evidence provided. I have carefully considered this evidence but I have only documented the relevant evidence which I relied upon to making findings in this Decision.

Issue(s) to be Decided

Is the Tenant entitled to cancel the Notice?

Background and Evidence

Both parties agreed that this tenancy on a month to month basis started on December 1, 2001. Although the parties agreed that a written tenancy agreement had been signed for this tenancy, neither party was able to produce a copy of it as they were no longer in

possession of it. The parties confirmed that rent is payable by the Tenant in the amount of \$526.00 on the first day of each month.

The Landlord's agent explained that several years ago, the Tenant acquired a small dog contrary to the park rules which do not allow residents to have pets in the park. The Landlord's agent referred to section 12 of the park rules which say:

"This is a pet-free park, however, if you have guests who bring a dog with them, these pets must be on a leash and walked off park property, and not on your neighbours space. Please remember to take plastic bags for pet clean-up, and do not allow dogs to bark or run loose while in the park."

[Reproduced as written]

The Landlord's agent submitted that the Landlord did become aware that the Tenant had a dog at the time he got it. However, it was not a problem at that point because the Tenant kept the dog in the mobile home on a permanent basis and no complaint was made by the other residents in the park.

The Landlord's agent stated that in the spring of 2015, the Tenant acquired a mobile scooter. As a result, the Tenant started taking out the dog by parading it around the mobile home park. Shortly after this, the Landlord began to receive complaints from residents that there were dog faeces being discovered around the park.

As a result, the Landlord sent all residents a written notice dated March 31, 2015. The Notice notified residents that dog excrement had been discovered in the park and that the rules of the park of having guests with dogs must be adhered to otherwise this would be dealt with by eviction.

The Landlord's agent explained that following on from this notice, the Landlord received a letter of complaint from one of the residents who had witnessed the Tenant taking his dog along the side of his neighbour's yard and allowing the dog to defecate on the lawn. The resident was called by the Landlord's agent to provide testimony to this event. The witness explained that the Tenant had failed to pick up the dog faeces on April 24, 2015 and that it was not removed until two days later.

The Landlord's agent explained that as a result of this incident, the Landlord wrote the Tenant a letter dated May 5, 2015 in which he explained that one of the residents had seen his dog defecating on his neighbour's lawn which was against the park rules. The Landlord wrote in the letter that as a result, the Tenant is requested to remove the dog from the park by May 19, 2015 otherwise he would be given a notice to end his tenancy.

The Landlord's agent explained that the Tenant wrote back to the Landlord on May 9, 2015 indicating that he would not be getting rid of the dog. As a result, the Landlord personally served the Tenant with the Notice on May 26, 2015 for the reason that the "Tenant has breached a material term of the tenancy agreement that was not corrected after written notice to do so". The Notice was provided into written evidence and shows an expected date of vacancy of June 30, 2015.

The Tenant testified that he had purchased the dog at the end of December 2009 and in January 2010 he presented the Landlord with a medical note from his doctor stating that it would be beneficial for the Tenant to have a dog with him. The medical note was provided into evidence. The Tenant testified that the Landlord was introduced to the dog and it was explained to the Landlord that the dog was there for the benefit of the Tenant's wife as the Tenant was working out of town for long periods of time.

The Tenant submitted that at no time did the Landlord object to him having the dog and that at no time did the Landlord tell him to get rid of it. The Tenant explained that during this time the dog mainly resided in the mobile home and that recently because he became mobile he decided to take the dog for short walks.

The Tenant admitted to the one occasion that had been testified to by the witness during which the dog had defecated on the neighbor's lawn. The Tenant testified that he intended to pick it up but could not do so at that moment as he got called to the hospital regarding his wife who was undergoing medical treatment. The Tenant explained that he did eventually come back the next day and pick up the dog feces. The Tenant denied that there were any other occasions where his dog had defecated in the mobile home park as he is now taking the dog to local dog parks.

The Landlord's agent confirmed that there had been no other reported incidents of the Tenant's dog defecating in the mobile home park since the Notice was served to the Tenant. The Landlord's agent submitted that they have to now take action against the Tenant by asking him to remove the dog because the Tenant has "Let the genie out of the bottle", submitting that the residents of the mobile home park will now complain that the Tenant has a dog when it is a pet-free park.

The Landlord's agent submitted that the Landlord had not given any consent to the Tenant to have the dog but acknowledged that the Landlord was aware the Tenant did have a dog residing with him and did not take issue with this because the Tenant and his wife were going through a tough time with medical issues.

Analysis

In relation to the Notice, I find the format and content of the Notice complied with Section 45 of the Act. I also find that the Notice was served to the Tenant correctly in accordance with Section 81(a) of the Act on May 26, 2015. The Tenant made the Application to dispute the Notice on May 27, 2015 and I find that this was within the ten day time limit stipulated by Section 40(4) of the Act.

The Landlord served the Tenant with a Notice based on the allegation that the Tenant has breached a material term of the tenancy agreement by having a dog which is against the park rules. The Landlord confirmed during the hearing that it was because the Tenant had paraded the dog around the park and had now 'let the genie out of the bottle' in showing other residents that he had a dog, that he seeks to end the tenancy.

Although the parties agreed that there was a tenancy agreement in effect for this tenancy, neither party was able to produce a copy that would have allowed me to review it to see if it contained a material term which prevented tenants from having a dog. As this is not before me, I find the Landlord has failed to show that the Tenant breached a material term of the tenancy agreement and the Notice must fail in this respect. Furthermore, Policy Guideline 8 to the Act which defines a material term states the following in part:

"A material term is a term that the parties both agree is so important that the most trivial breach of that term gives the other party the right to end the agreement.

To determine the materiality of a term during a dispute resolution hearing, the Residential Tenancy Branch will focus upon the importance of the term in the overall scheme of the tenancy agreement, as opposed to the consequences of the breach. It falls to the person relying on the term to present evidence and argument supporting the proposition that the term was a material term.

The question of whether or not a term is material is determined by the facts and circumstances surrounding the creation of the tenancy agreement in question. It is possible that the same term may be material in one agreement and not material in another. Simply because the parties have put in the agreement that one or more terms are material is not decisive. During a dispute resolution proceeding, the Residential Tenancy Branch will look at the true intention of the parties in determining whether or not the clause is material."

[Reproduced as written]

In my analysis of the evidence provided by the parties of how the Tenant came to be with his dog, I find there is sufficient evidence to show that the Landlord made a clear

representation to the Tenant that his dog was acceptable in the tenancy. While there is no evidence that the Landlord gave express written or oral consent to the Tenant to have the pet, I find the Landlord knew of the existence of the dog and failed to act in a timely manner to rectify the breach of the very park rules the Landlord relied on during the hearing which were in existence at the time the Tenant got the dog.

In *Al Stober Construction Ltd. v. Charles Henry Long*, Kelowna Registry, 52219, 20010525, Madam Justice Lynn Smith also considered the issue of materiality and notes in paragraph 35 of her reasons, "If the term was "fundamental" to the agreement, the landlord would have rigorously enforced it".

In this case, I find that the Tenant has had the dog since 2010 and I find that this is a significant period of time during which the Landlord failed to make mention or took issue with the dog. I find that the Landlord cannot seek to now enforce a "pet-free" clause in the park rules after giving implied consent to the Tenant in allowing the dog in this tenancy, irrespective of whether the Landlord allowed the dog out of empathy for the Tenant. Therefore, I find the Landlord has failed to provide sufficient evidence to show that the Tenant breached a material term of the tenancy with respect to having a dog in the tenancy.

Estoppel is a legal principle that bars a party from denying or alleging a certain fact owing to that party's previous conduct, allegation, or denial. The rationale behind estoppel is to prevent injustice owing to inconsistency. In addition, Section 7 of the Act stipulates that a party claiming a loss resulting from the other party's non-compliance with the Act, regulation or tenancy agreement must do whatever is reasonable to minimize the loss.

Based on the foregoing, I find the Landlord is now estopped from enforcing the "pet-free" clause of the park rules **in this tenancy** as he had given implied consent to the Tenant to have the dog and had not consistently enforced the park rule in this tenancy.

In relation to the parties' evidence regarding the Tenant's dog defecating on the neighbor's yard, the Tenant admitted to the one occasion that it occurred and for this incident the Tenant did return to pick up the mess, be it that it was a long period after. The Landlord failed to provide sufficient evidence that the Tenant's dog is habitually defecating on the park premises and I find that one proven incident of this is not sufficient for me to end this tenancy. Furthermore, the Landlord's agent confirmed that since the issuing of the Notice, no further incidents or complaints have been reported by residents. However, the Tenant is put on notice that further incidents may give the Landlord cause to issue a Notice for other reasons.

Conclusion

The Landlord has failed to prove there has been a breach of a material term of the tenancy agreement. Therefore, I cancel the Notice issued by the Landlord to the Tenant on May 26, 2015. The tenancy will continue until it is ended in accordance with the Act.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Manufactured Home Park Tenancy Act*.

Dated: July 13, 2015

Residential Tenancy Branch

