



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPC, OPB, CNC, O

Introduction

In the first application the landlord seeks an order of possession pursuant to a one month Notice to End Tenancy dated May 8, 2015, or an order of possession in the event the tenant does not remove a dog from her manufactured home site.

The Notice claims that the tenant has breached a material term of the tenancy (by having a large dog) and has failed to remedy the breach within a reasonable time after being given notice in writing to do so.

In the second application the tenant seeks to cancel that Notice

Issue(s) to be Decided

Does the relevant evidence presented during the hearing show on a balance of probabilities that the tenant is guilty of the alleged breach? If not, is the landlord entitled to some other remedy?

Background and Evidence

The manufactured home site (the "site") is in a 15 site manufactured home park.

The tenant came into the park in 2005. The most recent tenancy agreement is dated effective April 1, 2012. The current rent is \$447.75 per month, due in advance and payable on the first of each month.

There is no dispute but that about a year ago the tenant acquired a dog and that the landlord has written the tenant twice directing her to remove the dog from the park because it is contrary to park rules. The letters warn that eviction proceedings would follow in the event the dog was not removed.

The tenant feels that her dog is not a problem dog. No one has complained about it and there are two or three other dogs in the park.

The relevant clause in the “Tenancy Agreement & Park Rules” is clause 40. It reads,

Pets: unfortunately we do not allow large dogs in the park due to liability issues. Small dogs less than 15 pounds + or -, will be considered only after interview with park owners or management. Visiting pets/dogs are to be kept on a leash at all times or inside the home or vehicles.

The landlord testifies and was questioned about liability issues flowing from having dogs in the park but it was discerned that the major reason for the exclusion is because his wife, one of the park owners, has an aversion or fear of large dogs.

Neither the landlord nor his wife lives in the park.

The landlord submitted photographic evidence of the dog in question. It is not an overly big dog but neither is it a small one. There is no dispute but that it weighs well in excess of 15 pounds.

Analysis

The parties to a tenancy agreement are not required to state in it the reason for any particular clause. In this case, the reference in clause 40 to “liability issues” is not particularly pertinent.

The fact that the landlord, in the view of the tenant, has chosen to enforce this particular provision against her and not other possible violators is not a defence if the clause is a reasonably enforceable one.

I find that the clause is an enforceable clause, agreed to by the tenant when she signed the agreement.

However, a landlord cannot evict a tenant under the *Manufactured Home Park Tenancy Act* (the “Act”) for a breach of any clause in the tenancy agreement. Only the breach of a “material term” will suffice. Section 40(1)(g) of the *Act* provides that an eviction notice may be served in a case where,

- (g) the tenant
 - (i) has failed to comply with a material term, and
 - (ii) has not corrected the situation within a reasonable time after the landlord gives written notice to do so;

Residential Tenancy Policy Guideline 8 “Unconscionable and Material Terms” provides,

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.

In my view, the term in question prohibiting large dogs is not a material term. Had the parties discussed the matter at the start of the tenancy I consider that they would have agreed that in the event of the tenant possessing a large dog she might be ordered to remove it. I don't think they, or any reasonable person, would have agreed that it would cause the tenancy to end.

In result, the landlord has not shown that the tenant has breached a material term of the tenancy agreement and on that basis the Notice cannot be upheld. I grant the tenant's application and cancel the Notice to End Tenancy dated May 8, 2015.

At the same time, I find that the tenant is in breach of clause 40 of her tenancy agreement. I exercise my authority under s. 55 of the *Act* and **I order that the tenant remove or have removed from her site, and keep removed, the dog shown in the photographs filed by the landlord at this hearing and that she do so within 60 days following this hearing.**

The landlord is free to enforce his rights under s. 40(1)(k) of the *Act* for noncompliance.

Conclusion

The tenant's application is allowed. The landlord's application is allowed in part.

This decision was rendered orally at the hearing. I dispense with any requirement that it be served on the tenant before enforcement.

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 02, 2015

Residential Tenancy Branch

