Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, O

Introduction

This hearing dealt with the tenant's Application for Dispute Resolution seeking to cancel a notice to end tenancy and an order to have the landlord provide quiet enjoyment.

The hearing was conducted via teleconference and was attended by the tenant and the landlord's agent.

Upon review of the tenant's Application for Dispute Resolution I noted that the tenant had submitted an Application on June 2, 2015 naming the landlord and the landlord's agent as respondents seeking to cancel a 1 Month Notice to End Tenancy. I also note the tenant submitted, on June 19, 2015 another Application that she noted as an amended Application. In this Application, the tenant named only the landlord's agent as the respondent and had checked "Other" as her reason for the dispute but there was no longer a notation on seeking to cancel the 1 Month Notice.

At the outset of the hearing the tenant clarified that she had intended to name both the landlord and the landlord's agent as respondents and sought both to cancel the 1 Month Notice to End Tenancy for Cause and seek a remedy for loss of quiet enjoyment.

Despite this amendment, Residential Tenancy Branch Rule of Procedure 2.3 states that claims made in an Application for Dispute Resolution must be related to each other. Arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply.

It is my determination that the priority claim regarding the 1 Month Notice to End Tenancy for Cause and the continuation of this tenancy is not sufficiently related to the tenant's claim for a remedy for a loss of quiet enjoyment. The parties were given a priority hearing date in order to address the question of the validity of the Notice to End Tenancy.

The tenant's other claim is unrelated in that the basis for it rests largely on other facts not germane to the question of whether there are facts which establish the grounds for ending this tenancy as set out in the 1 Month Notice. I exercise my discretion to dismiss the tenant's claim for a remedy for the loss of quiet enjoyment. I grant the tenant leave to re-apply for her other claim.

The landlord identified that the tenant had submitted a supplementary evidence package to her on July 16, 2015. Residential Tenancy Branch Rule of Procedure 3.1 requires the applicant to serve the respondent with their evidence within three days, if available, of their Application being accepted. For any evidence not available at the time the applicant filed their Application it must

be served on the respondent as soon as possible or at least no later than 14 days prior to the hearing.

As July 16, 2015 was only 6 days prior to the hearing I find the tenant has failed to serve this secondary package of evidence in accordance with the Rules of Procedure. However, the landlord has reviewed this evidence and was prepared to respond to it. As such, I have considered this evidence.

During the hearing the landlord did not request an order of possession should the tenant be unsuccessful in her Application for Dispute Resolution.

Issue(s) to be Decided

The issues to be decided are whether the tenant is entitled to cancel a 1 Month Notice to End Tenancy for Cause, pursuant to Section 40 of the *Manufactured Home Park Tenancy Act (Act).*

Background and Evidence

The parties submitted into evidence the following relevant documents:

- A copy of a tenancy agreement signed by the parties on September 2, 2014 for a month to month tenancy starting on September 20, 2014 for the monthly rent of $415.00 due on the 1st of each month. Section 7 of the tenancy agreement state, at least in part;
    - "The landlord has approved only the following pet(s): 1 indoor cat, 4 yrs old. As a material term of this Agreement the Tenant agrees to adhere to all Park Rules regarding pets and agrees to obtain the Landlord's written approval in writing before bringing any pet into the Park, except for small indoor caged birds or animals, or fish in an indoor tank. Where the Landlord has given permission for any pet in writing, the Tenant shall ensure that the pet does not disturb other persons in the Park or adjoining property in regard for the quiet enjoyment of the other tenants, occupants and invited guests in the Park. If the Tenant fails to control the pet within the meaning of this Section and the Park Rules, the Tenant may be required to remove the pet from the Park within two weeks of receiving written notice from the landlord to do so, or such other penalties as are provided in the MHPTA."
- Relevant sections of the Park Rules include:
    - "Control and cleanup for pets: Quiet pets under control are welcome and must be kept on a leash at all times when outside the Tenant's home or the Tenant's fenced yard. It is the responsibility of the Tenant pet owner to clean up after his pet and to keep the pet off the sites of other tenants. Pet owners are responsible for any and all damage done by their pets, either to their manufactured home site, the Park's common property or the property of other tenants or their guests"; and
    - "Complaints: Pets that are noisy, unruly or who cause complaints must be removed from the Park within two weeks of receiving written notice from the Landlord to do so."
- A copy of a 1 Month Notice to End Tenancy for Cause issued on June 2, 2015 with an effective vacancy date of July 6, 2015 citing a breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.

The landlord submits that the tenant noted in her Application for Tenancy that she had an indoor cat and that the cat stays indoors all the time because she tends to run away. The landlord also submits she forwarded to the tenant, on December 24, 2014 a copy of a pet agreement that she states the tenant never returned. The landlord submitted a copy of a sample pet agreement into evidence.

The landlord submits that from the time the tenant moved into the park until December 5, 2014 the tenant's cat has been seen outside 3 times. In response the landlord provided the tenant with a warning letter dated December 5, 2014 that states:

> "Rules for pets not being followed.
>
> It was agreed upon and forms part of your Tenancy Agreement that your cat would be an indoor cat only.
>
> Your cat has been seen outside 3 times since you moved in. Once at my door approximately 3 weeks ago, then at your home on Friday Nov 28th and again on Dec 2nd." [reproduced as written].

The landlord submits that since that letter was written the tenant's cat has been seen outside of the tenant's site on at least 4 occasions. The landlord has also submitted into evidence a handwritten letter of complaint from a neighbouring tenant stating that the tenant's cat has defecated in the neighbour's yard.

The tenant submits that despite the landlord's referral to her approval of an indoor cat as a material term of the tenancy agreement the tenant believes it is not a term at all, let alone a material term. She states that the clause is simply a description of the type of cat that was approved by the landlord.

The tenant also submits that while her cat remains indoors, there are times when she does escape from her home. The parties agreed that on one occasion that the landlord attended the tenant's home the cat escaped while the landlord was entering the home.

Analysis

Section 40 of the *Act* allows a landlord to end a tenancy by giving notice to end the tenancy if the tenant has failed to comply with a material term, and has not corrected the situation within a reasonable time after the landlord gives written notice to do so.

From the testimony of the landlord I find that the landlord has focused primarily on the breach of the material term that the tenant's cat is not an indoor cat. However, I find nothing in the tenancy agreement or park rules that restricts any tenant from having only an indoor cat. I find the agreement and rules speak only to unacceptable behaviours of pets that have already been approved by the landlord.

From the testimony of both parties I find that there is insufficient evidence to establish that the tenant has intentionally let her cat run freely either in her site or anywhere else in the park.

I also find that the relevant terms of both the tenancy agreement and park rules indicate only that the consequence for failure to comply with either the tenancy agreement or park rules in relation to pets is that the landlord may issue a notice to have the pet removed within 2 weeks.

While the landlord has submitted a copy of a sample Pet Agreement I have not considered its content in relation to this case as it was not signed by either party.

As the landlord as failed to follow her own procedure for dealing with a breach of the pet clause in the tenancy agreement and the rules regarding pets in the Park Rules, I find the landlord has failed to provide sufficient justification of the tenant's failure to resolve a breach of a material term.

While I make no definitive finding on whether or not the pet terms form a material term of the tenancy agreement, I caution the tenant that regardless of the materiality of the terms in her tenancy agreement and park rules she did agree to abide by these rules and she owes a duty of care to ensure that her cat does not run freely throughout the park.

Conclusion

Based on the above, I order the 1 Month Notice to End Tenancy for Cause is cancelled and the tenancy remains in full force and effect.

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 27, 2015

Residential Tenancy Branch