



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Action Property Management
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC

Introduction

This was a hearing with respect to an application by the tenants to cancel a one month Notice to End Tenancy for cause. The hearing was conducted by conference call. The named tenant and the landlord's representative called in and participated in the hearing.

Issue(s) to be Decided

Should the Notice to End Tenancy dated July 6, 2015 be cancelled?

Background and Evidence

The rental unit is an apartment in Fort St. John. The tenancy began in April, 2015. The landlord's representative testified that the tenants were given several warning letters as a result of noise complaints from other occupants of the rental property. The Landlord gave the tenants a breach letter dated May 29, 2015 because of complaints regarding loud noise and heavy traffic coming and going from the rental unit that was disturbing the tenants' neighbours. The landlord received additional complaints from occupants disturbed by the tenants' dog barking and whining at all times of the day and night. The landlord gave the tenants a second breach letter dated June 25, 2015.

There were further complaints about the dog received from occupants of the rental property and the landlord responded by serving the tenants with a one month Notice to End Tenancy for cause dated July 6, 2015. The notice alleged that the tenants had unreasonably disturbed other occupants or the landlord and had failed to correct the breach of a material term of the tenancy within a reasonable time after notice to do so. The Notice to End Tenancy required the tenants to move out of the rental unit by August 31, 2015.

The tenants filed an application for dispute resolution seeking an order cancelling the Notice to End Tenancy. The tenants submitted that their dog was necessary and crucial to their well-being, in part because one of the tenants is deaf and the dog was able to alert the tenant to danger or to the arrival of visitors. The tenants submitted a note from a physician who commented that the dog was required for the tenants' protection.

At the hearing the tenant acknowledged that the dog, a small breed, did have a barking problem after they moved in. The tenant intended to take steps, including the use of a special collar, to discourage the dog from barking, but he testified that the dog has improved and the barking has abated.

The landlord's representative acknowledged that she has not received complaints recently since the Notice to End Tenancy was given. She said that the tenants may have carefully acted to avoid further noise complaints until the hearing, but expressed concern that they may revert to their old patterns after the hearing if the tenancy is allowed to continue. The landlord's representative agreed at the hearing that the Notice to End Tenancy could be cancelled, provided that the tenants understood that future noise complaints, particularly complaints about their dog would cause the landlord to immediately issue another Notice to end the tenancy.

Analysis

I find that the noise complaints from other residents were valid and that they justified the issuance of a one month Notice to End Tenancy for cause. Although the dog may be important to the tenants because it acts as a service dog, that fact does not prevent the landlord from acting to evict the tenants for cause if, in the future, the dog's barking disturbs other occupants and interferes with their quiet enjoyment of the rental property.

The tenants were cautioned during the hearing that the landlord's consent to the cancellation of the Notice to End Tenancy will not preclude the landlord from issuing a new Notice to End Tenancy and from relying on the past noise complaints as well as any future episodes as grounds for eviction if the landlord finds that other occupants continue to be disturbed by noise and barking.

Conclusion

With the consent of the landlord's representative the Notice to End Tenancy dated July 6, 2015 is cancelled. The tenancy will continue until ended in accordance with the *Residential Tenancy Act*. Because this application has been granted based on the

landlord's consent to the withdrawal of the Notice to End Tenancy, I do not award the tenants the recovery of the filing fee for this application.

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: September 17, 2015

Residential Tenancy Branch

