



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Willow Beach Developments Ltd.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC, FF

Introduction

This hearing was convened by way of conference call concerning an application made by the tenant for an order cancelling a notice to end the tenancy for cause and to recover the filing fee from the landlords for the cost of the application.

The hearing did not conclude on its first scheduled date and was adjourned for a continuation of testimony, and adjourned again due to issues with evidence. The tenant and the named landlord attended the hearing on all scheduled dates, and the named landlord represented the landlord company.

The parties each gave affirmed testimony, and the landlord called 5 witnesses and the tenant called one witness, who also gave affirmed testimony. The parties were given the opportunity to question each other and the witnesses respecting the evidence and testimony provided, all of which has been reviewed and is considered in this Decision.

At the beginning of the second day of the hearing, the landlord opposed inclusion of the tenant's late evidence. I ordered that the landlord's evidence in response to the tenant's late evidence was to be delivered to the tenant and to the Residential Tenancy Branch by August 28, 2015, and my Interim Decision was provided to the parties, and the hearing was adjourned.

On the third scheduled date, the tenant applied to adjourn the hearing again to permit time to respond to the landlord's evidentiary material, however the application to adjourn was denied.

Also on the third scheduled date, the landlord applied to re-testify and to call one of the witnesses who had previously testified, due to the evidentiary material provided by the tenant after the hearing had concluded for the day. The landlord and the landlord's witness testified again and the tenant was given the opportunity to question them with respect to that testimony.

Issue(s) to be Decided

Have the landlords established that the 1 Month Notice to End Tenancy for Cause was issued in accordance with the *Manufactured Home Park Tenancy Act*?

Background and Evidence

The landlord testified that this month-to-month tenancy, being a manufactured home site in a manufactured home park, began on March 12, 2013 and the tenant still resides in the manufactured home situated on that site. Rent in the amount of \$300.00 per month is payable on the 1st day of each month and there are no rental arrears.

The landlord further testified that the tenant was personally served with a 1 Month Notice to End Tenancy for Cause on June 11, 2015 but the tenant refused to sign it. A copy of the notice has been provided and it is dated June 11, 2015 and contains an effective date of vacancy of August 1, 2015. The landlord also sent it to the tenant by registered mail on June 11, or 12, 2015. The reasons for issuing the notice are:

- Tenant has engaged in illegal activity that has, or is likely to:
 - damage the landlord's property
 - adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant or the landlord;
 - jeopardize a lawful right or interest of another occupant or the landlord.

The landlord testified that the tenant built a fence without any approval from the landlord. The tenancy agreement, a copy of which has been provided, states that any changes to the property require the landlord's approval. The tenant has caused damage to the property by leaving debris left over from building the fence.

The landlord told the tenant to build a fence but he did so building around 2 lots with a gate onto someone else's property. He was to discuss it with the landlord so the landlord could get approval from the owners of the manufactured home park. The landlord gave the tenant a notice in writing on June 10, 2015 about the tenant's dog, stating that there must be immediate attention to build fence but it was still to be approved by the owner. The landlord never considered for a moment that he would just build it. The property is under development, registered with Regional District. Since the park will be developed it was suggested to tenants not to make improvements.

The landlord also testified that the tenant has a dog that other tenants in the park are afraid of and has been attacking people in the park. People are terrified. The tenancy

agreement also states that only 1 pet is allowed and the tenant has 3. Also, dogs must be accompanied by the owner, not allowed to run free in the park. The tenant has been asked to put the dogs on a leash.

On March 10, 2015 the tenant started a fire to burn debris. The park has a wood burning pile for all residents and a fire from that every October. The fire the tenant started was in a vacant lot. Anything he didn't want, he burned. He raked it and burned it which was disruptive to others due to the smoke, and the burning smell was nauseating. Four other tenants have complained about the burning and the tenant's dogs. On March 30, 2015 the landlord received emails of complaint from other tenants and told the tenant he can't have 3 dogs.

The parties attended a dispute resolution hearing on April 7, 2015 wherein the tenant's application for an order cancelling a notice to end the tenancy for cause was upheld because the landlords had not provided any evidence of the reasons for its issuance. The reasons at that time were different, and the landlord changed the reasons on this notice to "illegal activity" because the tenancy agreement says only 1 dog and to be with the owner at all times. The landlord and agents have talked to the owner over and over again since last summer.

The landlord manages the park and went to the tenant's residence to collect rent in May, 2015 and the tenant's dog came to the door of the landlord's car barking. The landlord couldn't get back into her car.

The landlord has been intimidated to the point where she had to stay in her car. While at another residence, the dog came to the landlord's vehicle, the dog's teeth were showing and he was barking, circling waiting for her to get out of the car. The landlord flung dirt at him and he came at her. When she got back into her vehicle, the dog started running toward the vehicle barking.

As the landlord received more complaints from other occupants, the landlord called a dog catcher asking to investigate. The landlord spoke to an animal control officer on June 17, 2015 who spoke to the tenant and requested the dog be contained and on a leash. The animal control officer told the landlord that the conversation was amiable and that he was content that the tenant could keep the dogs under control, but barking is still a big issue. It is constant at times for 3 ½ hours and has been continual since July 15, 2015. Tenants call the landlord and tell the landlord that the barking never stops.

The tenant's daughter lives in the manufactured home next door, and they have fenced 2 lots to become one so that their dogs can run between the 2 yards. The tenant says

one dog belongs to his daughter, one is his and he gave the other one away, but the landlord has no idea if that is true or how many dogs the tenant has today.

The landlords' first witness (SS) testified that she lives behind the tenant, directly behind the vacant lot. The witness initiated a complaint to the landlord on February 9, 2015. The witness' grandson was having a birthday party and there were kids on the deck. The tenant's dog entered the witness' yard barking and snarling at the kids and they were trapped. They were afraid to go past the stairs so couldn't get into the house. The witness chased the dog away with a broom.

The witness also testified that the dog barks at everything and everyone. On Canada Day the dog began barking around 4:00 and continued for hours. Later that evening a neighbour came home at dusk and couldn't get out of her vehicle because 3 dogs had swarmed it. Another tenant yelled at them. The girl was still yelling at the dogs to get away from her. The barking continued during the fireworks in the evening.

The landlords' second witness (MD) testified that barking is about 5 minutes at a time, then again. When the dog sees the witness he barks constantly. The witness talked to the tenant's wife asking if she couldn't keep him quiet and stop barking for more than 20 minutes at a time. She said she'd give the witness her phone number.

On June 5, 2015 a neighbour was walking a small dog by the witness' property and the witness saw the neighbour hit the tenant's dog with a stick because the dog was attacking the neighbour's dog.

The witness also testified that the tenant erected a fence between their lots but the tenant determined what would be the lot line. There was supposed to be 7 feet between the witness' home and the fence but there's only 2 or 3. The tenant and the witness signed an agreement, a copy of which has been provided, stating that the parties agree that the fence shall be erected at the tenant's expense.

The landlord's third witness (GG) testified that the tenant's dogs are not trained at all. They are aggressive and dangerous and should be kept under control at all times. One of the tenant's dogs attacked the witness' dog unprovoked, and the witness had to separate them with a stick. The tenant's dog is about 4 times the size of the witness' dog.

The witness has provided a letter describing incidents with the dog and barking all hours of the day and night, and affirms that the contents of that letter are true.

The landlord's fourth witness (PG) testified that she had some trouble with the tenant's dog attacking her. On 2 occasions while riding her bicycle the dog charged at

the witness and her dog. The witness' dog was afraid and the tenant's dog has been very aggressive toward her. The witness was also afraid for herself and her dog.

The witness also testified that the tenant's dog barks quite a lot, 1 ½ to 2 hours non-stop. During the third week of August it wasn't wandering around or barking as much and an improvement was noticed. The witness does not reside in the manufactured home park, but has a 5th wheel on a lot that backs onto the tenant's yard and the witness vacations there. The witness is not aware of other incidents and doesn't really know the tenant.

The landlord's fifth witness (DD) testified that quite often the tenant's dog charges when it's alone on the beach or alone anywhere. The witness' nieces or nephews wouldn't go to the beach alone because of the dogs and the witness has seen the dogs go after them, and has heard them barking in excess of an hour whether the tenant is home or not. On one occasion, the brown dog got loose and was wandering over toward a neighbour's yard where 2 small children were playing and the dog started advancing toward them. The witness yelled and went after the dog to make a distance between it and the children. The witness yelled at the home where the kids came from and to the tenant's house to get his dog under control. The dogs went back, the tenant's wife came out and grabbed the dog. A verbal altercation took place about why the dog was out. It became a heated exchange.

The witness also testified that he requested lot lines. The previous owner's son put surveyors flags down which were 4 feet inside where the tenant built the fence. He did not follow the flag lines, and the previous owner's son talked to him about it. The witness has also asked the tenant to not park on the witness' lot.

The tenant testified that he has spoken to everyone about his puppy. The dog was between 7 and 9 months old, and has never bitten or attacked anyone or any other animals. Every request has been done, and all accusations are new to him. The tenant has never been told about the fears or incidents of other tenants, and the dog always stays indoors at night. The tenant takes good care of his pets, but the dog has escaped. The dog has gotten out but no one has been hurt. He's not violent but he barks. The tenant denies any attack against another tenant's dog, and the only attack was that tenant hitting the dog with a stick.

The tenant further testified that the landlord requested the tenant build a fence. The line agreed to was not changed, and the tenant measured. The back fence posts and old plywood were already there, which were replaced, and another was partially there. The tenant did everything he was asked to do.

The tenant further testified that his family is not out to bother people, and they are reasonable. The tenant feels they're being picked on.

The tenant's witness testified that she is the tenant's daughter and lives next door, and both have a dog. The dogs never spend the night outside, and only bark when someone comes over.

When asked that since the landlord has had complaints of the dog barking outside at night, how can the witness say it's never outside, the witness replied that another dog was barking.

Analysis

Where a tenant disputes a notice to end a tenancy given by a landlord, the onus is on the landlord to establish that it was issued in accordance with the *Manufactured Home Park Tenancy Act* which can include the reasons for issuing it. I have reviewed the notice and I find that it is in the approved form and contains information required by the *Act*. The reasons for issuing it are in dispute.

I have reviewed the tenancy agreement which clearly states that no structural alterations without the landlord's consent are permitted but it does not specify that the consent of the landlord must be in writing. The tenant testified that he was told by the park management to build a fence so he did. No one ever told him that drawings or approval of the fence built was required. The landlord's agent testified that the tenant was told to build a fence but expected it to be an approved fence. However, I find that the tenant took it as approval, and the tenant has not contravened the tenancy agreement.

With respect to the dog, I have reviewed the evidentiary material which shows that tenants have been complaining and the landlord has spoken to or written to the tenant about the barking and running freely within the park on several occasions. Whether the tenant or his daughter believe it or not, or whether they accept it or not, people are terrified of the dogs. Not only are they terrified, they are constantly disturbed by the barking. I don't accept the testimony of the tenant's witness that they hear another dog barking; that was a very convenient answer to the question when no date or time was mentioned.

The notice to end the tenancy states that the tenant has engaged in illegal activity, and the landlord testified that the illegal activity is damage to the landlord's property while building the fence and leaving debris. She also testified that the tenancy agreement says only 1 dog is permitted and has to be with the owner at all times. Although I am

not satisfied that either of those is illegal, I am satisfied that the nuisance dog or dogs have been terrorizing the park and the tenant has been well aware of it and has been warned about it.

In the circumstances I find that the landlord had cause to issue the notice, and the tenant's application is hereby dismissed.

Conclusion

For the reasons set out above, the tenant's application is hereby dismissed.

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: September 09, 2015

Residential Tenancy Branch

