



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

CNC FF

Introduction

This hearing dealt with the tenants' application to cancel a notice to end tenancy. Both of the tenants and an agent for the landlord participated in the teleconference hearing.

At the outset of the hearing, each party confirmed that they had received the other party's evidence. Neither party raised any issues regarding service of the application or the evidence. Both parties were given full opportunity to give testimony and present their evidence. I have reviewed all testimony and other evidence. However, in this decision I only describe the evidence relevant to the issues and findings in this matter.

Issue(s) to be Decided

Should I cancel the notice to end tenancy for cause dated July 2, 2015?

Background and Evidence

The tenancy began on June 1, 2014 as a fixed term tenancy to end on May 31, 2017. The tenancy agreement contains an addendum with terms regarding the tenants' animals. The tenants are permitted "the pets [they] arrive[d] with," and the tenants must regularly clean all animal manure from the barn, around the house and the top of the driveway.

On February 26, 2015 the landlord served the tenants with a notice to end tenancy for cause. The tenants applied to cancel the notice, and a hearing was convened over two dates, April 15, 2015 and June 3, 2015. In the decision dated June 9, 2015 the arbitrator cancelled the notice to end tenancy. The arbitrator found that the clause in the addendum regarding animals was a material term, and with the exception of cats, the tenants were prohibited from replacing the original animals with new animals.

On July 2, 2015 the landlord served the tenants with a new notice to end tenancy for cause. The notice indicates that the reasons for ending the tenancy are as follows:

- the tenants have put the landlord's property at significant risk;
- the tenants have caused extraordinary damage to the rental property;

- the tenants have not done required repairs of damage to the property; and
- the tenants have breached a material term of the tenancy agreement and did not correct the breach within a reasonable time after written notice to do so.

Landlord's Evidence

The landlord stated that the tenants' animals are destroying the rental property, and the tenants are adding more animals contrary to the tenancy agreement.

The landlord stated that the tenants' horses are continuing to eat the fence rails and the trees on the property, as well as chewing on the support rails in the horse shelter. The landlord stated that some of the trees are now dead and more are dying. The landlord stated that while the tenants have put chicken wire around some of the trees, they failed to do so with all of the trees that are still alive.

The landlord submitted that the tenants have failed to remove animal manure from the property, including a "muddy manure slick" that the ducks are creating at the side and back of the house. The landlord submitted that the tenancy agreement does not allow for animals are to be penned or housed around the perimeter of the house and yard, but the tenants have placed a duck nesting house against the north back corner of the house and a duck swimming pond in the front.

The landlord stated that the tenants allowed ducklings and chicks to hatch, thereby adding animals to the property. The landlord submitted that the mother hen has been loose for months, contrary to the tenancy agreement.

The landlord submitted that they verbally agreed to allow the tenants to build a goat shelter, but the tenants have not yet painted the goat shelter and they have added perimeter fencing without the landlord's permission. The landlord submitted that the tenants also placed a perching rail on the exterior coop area without the landlord's permission.

In support of their application, the landlord submitted photographs depicting the ducklings, the trees and rails that the horses have been chewing, the manure in the horse shelter and a pool presumably for the ducks. The landlord also submitted documents including a letter addressed to the tenants dated June 30, 2015 and entitled "Reasons for eviction."

Tenants' Response

The tenants stated that the horses are not eating the trees anymore, as they have put up chicken wire around all of the living trees and they regularly check to make sure the horses have not gone near the trees. The tenants stated that the only trees that are not covered are the dead standing trees. The tenants stated that the horses have not been eating the new rails and if there is damage done, they will repair it again. The tenants stated that the landlord's

photographs are undated and some of them are clearly not current, as there is snow on the ground in the picture.

The tenants stated that one of the ducks hid her nest well enough that they could not find it, and the tenants sold the ducklings within two days after discovering them. The tenants acknowledged that one of the chickens had escaped the enclosure and came back with two chicks, but the chicks have been removed.

The tenants stated that the horse shelter is on a slope and the manure goes down the slope, so the landlord's photograph is misleading. The tenants stated that they installed extra support for the chicken enclosure to prevent the chickens from escaping again.

The tenants stated that they were never served with the June 30, 2015 letter and did not see it until the landlord submitted it in their evidence.

Analysis

I find that the notice to end tenancy dated July 2, 2015 is not valid.

The landlord failed to establish that the tenants have put the landlord's property at significant risk or caused extraordinary damage to the rental property. The landlord failed to establish any significant value or importance to the small stand of poplar trees that the horses have chewed on. I accept the tenants' evidence that they have taken steps to save the remaining living trees, as the landlord did not provide sufficient evidence that some of the living trees had not been enclosed in chicken wire.

The landlord did not provide sufficient evidence to establish that the horses were continuing to chew on the new fence rails, or that this would put the landlord's property at significant risk or caused extraordinary damage to the rental property. The tenants continue to be responsible for preventing or repairing any damage done by their animals.

The landlord did not provide clear evidence that the horse shelter is a significant structure, that it has been extraordinarily damaged or that damage to the shelter would put the property at significant risk. The landlord did not provide sufficient evidence that the ducks were causing extraordinary damage or putting the property at significant risk.

The landlord has failed to establish that the tenants have not done required repairs of damage to the property. In fact, as noted above, the tenants have been taking steps to repair previous damage done by their animals and appear to also be taking steps to prevent further damage. The landlord gave the tenants permission to build the goat shelter, so this cannot be considered a "required repair."

The landlord has failed to establish that the tenants have breached a material term of the tenancy agreement and did not correct the breach within a reasonable time after written notice to do so. The landlord failed to establish that the tenants were served with the letter dated June 30, 2015, and this letter does not set out any breaches that the landlord wants the tenants to remedy. Instead, it merely outlines the “reasons for eviction.” If the tenants did receive written notice of breaches to the tenancy agreement, the time period between June 30, 2015 and July 2, 2015, when the notice to end tenancy for cause was served, is not a reasonable amount of time for the tenants to correct any alleged breaches.

For these reasons, I cancel the notice to end tenancy for cause dated July 2, 2015.

Conclusion

I cancel the notice to end tenancy dated July 2, 2015. The tenancy will continue until such time as it ends in accordance with the Act.

The tenants are entitled to recovery of their filing fee, and they may therefore withhold \$50.00 from their next month's rent.

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 24, 2015

Residential Tenancy Branch

