



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding BOUNDARY MANAGEMENT INC.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes: CNC OPC FF

Introduction

Both parties attended the hearing and agreed that the Notice to End Tenancy dated October 29, 2015 to be effective November 30, 2015 was served by posting it on the door and the tenant's Application for Dispute Resolution personally to the management office. The hearing dealt with an application by the tenant pursuant to the *Residential Tenancy Act* (the Act) for orders as follows:

- a) To cancel a notice to end tenancy for cause pursuant to section 47; and
- b) To recover the filing fee for this Application.

Issue(s) to be Decided:

Has the landlord proved on the balance of probabilities that there is sufficient cause to end the tenancy or is the tenant entitled to any relief? Is the landlord entitled to an Order of Possession if the tenant is unsuccessful in the application?

Background and Evidence

Both parties attended the hearing and were given opportunity to be heard, to provide evidence and to make submissions. The undisputed evidence is that the tenancy commenced about 4 years ago, it is now a month to month tenancy, rent is \$850 a month and a security deposit and pet damage deposit totalling \$850 was paid. The landlord served a Notice to End Tenancy for the following reasons:

The tenant or a person permitted on the property by the tenant

- (i) has significantly interfered with or unreasonably disturbed another occupant or the landlord;
- (ii) has seriously jeopardized the health or safety or lawful right of another occupant or the landlord
- (iii) put the landlord's property at significant risk.

The landlord stated that the problem is the tenant allows his two dogs to urinate in his apartment and this causes such a smell in the hallway that other tenants cannot open

their doors. She said she has had several complaints and issued two breach letters, one on July 22, 2015 and one on August 31, 2015 but the complaints have continued. She said she has problems renting the unit across the hall from this tenant due to the smell. She said the smell carries to the tenant's clothing too and perhaps he has become so accustomed to it, he does not smell it. No complaint letters or breach letters were provided as evidence. She said the breach letters were in the tenant's evidence package and she assumed we received them. The tenant denies having them in his evidence. He said he got two warning letters.

The tenant said the landlord has tried to evict him several times but was unsuccessful. He said the building is up for redevelopment and the landlord has ulterior purposes in trying to evict tenants for cause so they can avoid the costs associated with eviction for redevelopment. He said he cleans everything well at least once a month and cleans up after his dogs. The landlord's agent said she just took over the job in April 2015 and has no knowledge of previous attempts to evict this tenant but the smell of his dogs is overwhelming and offensive.

Included with the evidence is a copy of the Notice to End Tenancy.

On the basis of the documentary and solemnly sworn evidence presented for the hearing, a decision has been reached.

.

Analysis:

While the landlord alleges the smell of the tenant's dogs is offending other tenants and disturbing their reasonable enjoyment and putting the landlord's property at significant risk, I find insufficient evidence to support her allegations. As explained to the parties during the hearing, the onus or burden of proof is on the landlord to prove they have good cause to end the tenancy.

When one party provides evidence of the facts in one way and the other party provides an equally probable explanation of the facts, without other evidence to support the claim, the party making the claim has not met the burden of proof on a balance of probabilities, and the claim fails. I find the landlord provided no objective evidence of complaints or breach letters to support her reasons for ending the tenancy. The tenant states he cleans up after his dogs and this is just another attempt to evict him due to redevelopment plans. I find the landlord has not met the onus of proving they have good cause to end this tenancy for the reasons stated. The Notice to End Tenancy dated October 29, 2015 is set aside and cancelled.

Conclusion:

The Application of the Tenant to set aside the Notice to End Tenancy is successful. **I HEREBY ORDER THAT the Notice to End Tenancy dated October 29, 2015 is set aside and cancelled. The tenancy continues.**

I HEREBY ORDER that the tenant may recover his filing fee by deducting \$50 off his rental payment for February 2016.

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: January 06, 2016

Residential Tenancy Branch

