



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, FF

Introduction

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

Both tenants and the landlord attended the hearing and each gave affirmed testimony. The parties were given the opportunity to question each other with respect to the testimony and evidence provided, all of which has been reviewed and is considered in this Decision.

During the course of the hearing, it was determined that some of the evidence provided by the landlord was received by the tenants but not by me prior to the hearing. A diligent search has been made and the landlord's evidentiary material has been received, and is considered in this Decision.

No other issues with respect to service or delivery of documents or evidence were raised.

Issue(s) to be Decided

Has the landlord established that the 1 Month Notice to End Tenancy for Cause was issued in accordance with the *Residential Tenancy Act*?

Background and Evidence

The landlord testified that this tenancy began on April 1, 2015 and the tenants still reside in the rental unit. Rent in the amount of \$650.00 per month is payable on the 1st day of each month and there are no rental arrears. On March 22, 2015 the landlord collected a security deposit from the tenants in the amount of \$300.00 which is still held

in trust by the landlord, and no pet damage deposit was collected. A written tenancy agreement exists, but a copy has not been provided for this hearing.

The landlord further testified that on January 28, 2016 he posted a 1 Month Notice to End Tenancy for Cause to the door of the rental unit, and a copy has been provided. It is dated January 28, 2016 and contains an effective date of vacancy of February 29, 2016. The reasons for issuing the notice are:

- Tenant or a person permitted on the property by the tenant has:
 - significantly interfered with or unreasonably disturbed another occupant or the landlord;
 - seriously jeopardized the health or safety or lawful right of another occupant or the landlord.

The tenants have 2 dogs, and one of the tenants' dogs went after the landlord's dog in May, 2015, and the landlord let it go. Then sometime in June, apparently the tenants' dog attacked a neighbour's cat. Police and a by-law officer were called. The veterinarian bill for the cat was over \$150.00. In August, 2015 the landlord's dog was attacked by the tenant's dog for a second time, and the landlord gave the tenants a warning. However, on September 5, 2015 the landlord, who also lives on the rental property, had guests visiting and their 2 dogs were attacked by the tenant's dog. One guest was also knocked over.

Local people walk their dogs on a greenway trail in a park near the rental property. The tenants' dog attacked another person's dog and again a by-law officer attended.

In January, 2016 the landlord delivered something to the tenants, and the tenants' dog attacked the landlord's dog for the third time. The landlord told the tenants the dog had to be removed from the property, but the tenants said that the landlord would have to evict them. The 1 Month Notice to End Tenancy for Cause was issued the following day.

The by-law enforcement officer was called again on March 7, 2016 due to the tenants' dog being off leash. The landlord has provided a copy of a complaint he made to the by-law officer setting out several of the incidents. Also provided is a letter dated March 7, 2016 from the City specifying past incidents noted. On January 27, 2016 the tenants' dog escaped once the door was opened to greet the landlord, and the dog bit the landlord's dog. It also states that September 16, 2015 on the greenway trail the tenants' dog was reported off leash and got assertive with a little dog, but no injuries were reported.

The first tenant testified that he does not recall anything happening with the dog in May, and the landlord's testimony is incorrect. The landlord's facts about an incident in June are also incorrect, in that a dog from the trail attacked the tenants' dog.

The attack on the neighbour's cat was not by the tenants' dog, and the tenants did not agree to pay the veterinarian bill. The tenants' dog was tied up and another dog from the trail attacked the cat. The tenant saw it, and got the cat away from the dog and helped the cat's owner. The only incident was on the trail.

The second tenant testified that the tenants take very good care of their 2 dogs and keep them around the house, on a leash, and make sure they don't run around. The landlord's dog is always off leash, barking around the tenants' rental unit.

In January, 2016 the landlord went to the rental unit with a package as the tenant was leaving for work. The landlord knocked on the door while the tenant was letting the dog out onto a leash not knowing the landlord's dog was there and off leash.

The neighbour's cat was attacked by a dog from the trail, not by the tenants' dog. The tenants had to call police because the neighbour came out with a knife threatening to kill the dog, but the dog had already run away.

With respect to the by-law officer's report provided by the landlord for this hearing, the tenants received a ticket and are disputing it. The tenants' dog was with the tenants the whole time, so the allegation could not have happened.

Analysis

Where a notice to end a tenancy given by a landlord is disputed by a tenant, the onus is on the landlord to establish that it was issued in accordance with the *Residential 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.

Incidents that take place on a trail off rental property are not within the jurisdiction of the *Residential Tenancy Act*, and therefore, I make no findings with respect to a dog's assertiveness in a local park. The tenants deny that any incidents with their dogs have taken place on the rental property, and it appears that there are other dogs, including the landlord's that have been off leash. I have no reason to disbelieve either party, and I find that there is insufficient supporting evidence to establish that the tenants' dog has been the dog in all incidents, or that the tenants have significantly interfered with or unreasonably disturbed another occupant or the landlord, or seriously jeopardized the health or safety or lawful right of another occupant or the landlord.

The 1 Month Notice to End Tenancy for Cause dated January 28, 2016 is hereby cancelled and the tenancy continues.

Since the tenants have been successful with the application, the tenants are entitled to recovery of the \$100.00 filing fee. I hereby grant a monetary order in favour of the tenants as against the landlord in that amount, and I order that the tenants be permitted to reduce rent for a future month by that amount or may otherwise recover it.

Conclusion

For the reasons set out above, the 1 Month Notice to End Tenancy for Cause dated January 28, 2016 is hereby cancelled and the tenancy continues.

I hereby grant a monetary order in favour of the tenants as against the landlord pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$100.00, and I order that the tenants be permitted to reduce rent for a future month by that amount or may otherwise recover it.

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: March 24, 2016

Residential Tenancy Branch