



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding TML Management Group Ltd.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC, MND

Introduction

This was a hearing with respect to the tenant's application to cancel a one month Notice to End Tenancy for cause and for a monetary order. The hearing was conducted by conference call. The 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 February 25, 2016 be cancelled?
Is the tenant entitled to a monetary award?

Background and Evidence

The rental unit is an apartment in a three storey apartment building in Chilliwack. The tenancy began on December 1, 2015 for a one year term with rent in the amount of \$800.00 payable on the first of each month. The tenant paid a \$400.00 security deposit and a \$400.00 pet deposit. The tenant has a dog that lives with her in the rental unit.

On February 25, 2016 the landlord served the tenant with a one month Notice to End Tenancy for cause by posting it to the door of the rental unit. The Notice to End Tenancy was dated February 25, 2016 and it required the tenant to move out of the rental unit by March 31, 2016. The stated reasons for the Notice were that the tenant has engaged in illegal activity that has adversely affected the quiet enjoyment, security, safety or physical well-being of another occupant or the landlord; that the tenant breached a material term of the tenancy agreement and that the tenant knowingly gave false information to a prospective tenant or purchaser of the rental unit or rental property.

The landlord's representative testified that the tenant provided false information on her initial rental application. After the tenancy began the landlord learned that the tenant lied about her previous tenancy. The tenant was evicted from her previous tenancy and she was convicted of arson. The landlord's representative also said that there have been noise complaints from her neighbours, in particular complaints about her dog barking excessively.

The tenant acknowledged at the hearing that she gave false information on her rental application; she did so because she needed a place to live and the landlord likely would not have rented to her if she disclosed her rental history. She had not been convicted of a criminal offence at the time she applied to rent the unit. The tenant testified that she is on probation and under the supervision of a probation officer.

After the landlord served the Notice to End Tenancy it sent a letter to the tenant dated March 15, 2016. In the letter the landlord claimed that the tenant breached a material term of the tenancy agreement by leaving her dog unattended in the rental unit and allowing it to bark, disturbing other occupants. The landlord said this was the tenant's written warning and any further notices would result in a fine. The landlord requested the tenant rectify the situation by getting a bark collar or by removing the dog.

The tenant disputed the landlord's claim that her dog is disturbing other occupants of the rental property. She said that she does not leave the dog alone in the rental unit and it stays in the room with her at night so she would be aware if the dog was barking at night.

Analysis

The tenant acknowledged that she gave false information when she filled out the application to rent the unit. The landlord claimed that the tenant has engaged in illegal activity that has affected the quiet enjoyment, security, safety or physical well-being of another occupant. The landlord referred to a barking dog with respect to this ground. The landlord has also raised the fact of the tenant's criminal conviction as a basis for ending the tenancy. The Residential Tenancy Policy Guideline with respect to illegal activities provides that:

A tenant may have committed a serious crime such as robbery or physical assault, however, in order for this to be considered an illegal activity which justifies issuance of a Notice to End Tenancy, this crime must have occurred in the rental unit or on the residential property.

The tenant's criminal conviction relates to an occurrence that did not take place at the rental property and that pre-dated her tenancy. I find that it does not constitute an illegal activity with respect to this tenancy and is therefore not a valid ground for ending the tenancy. I find that the landlord has not established that the tenant has engaged in illegal activity and the Notice to End Tenancy may not be sustained on this ground.

The landlord claimed that the tenant breached a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so. The landlord alleged that the tenant's barking dog amounted to a material breach of the tenancy agreement, in particular of the pet clause that requires that the tenant ensure that the pet does not disturb any person in the rental property. The landlord served the one month Notice to End Tenancy before it gave the tenant a written warning on March 15th and it cannot be said that the tenant was in breach of a material term when the Notice to End Tenancy was issued because the landlord had not yet given the tenant a written warning or provided the tenant with a reasonable amount of time to correct the alleged breach. The tenant denied that her dog disturbs other occupants and the landlord has not shown that the dog has disturbed other occupants after March 15, 2016. I find that the landlord has not established grounds support the Notice on the basis of a material breach of the tenancy agreement.

The landlord claimed in the Notice that the tenant knowingly gave false information to a prospective purchaser or to a prospective tenant. The tenant did give false information to the landlord in the application to rent, but the landlord has not provided evidence to establish that she made any false statements to a prospective purchaser or tenant. The landlord has not provided evidence to support this ground for ending the tenancy.

The tenant's past conduct and her false statements to conceal her history are troubling, but I find that the landlord has not proved on a balance of probabilities that it has grounds to end the tenancy for any of the reasons stated in the one month Notice to End Tenancy dated February 25, 2016. I therefore allow the tenant's application and order that the Notice to End Tenancy be, and is hereby cancelled. The tenancy will continue until ended in accordance with the *Residential Tenancy Act*.

This decision does not prevent the landlord from serving another Notice to End Tenancy if there are valid reasons for doing so. The landlord may also apply for an early end of tenancy if, in the future there is conduct by the tenant that the landlord believes would justify such an application.

The tenant amended her application to claim a monetary award. There is no basis for an award to the tenant for reimbursement of her past moving expenses and this claim is dismissed without leave to reapply.

Conclusion

The tenant's application to cancel the Notice to End Tenancy has been allowed. Her claim for a monetary award has been dismissed. The Notice to End Tenancy has been cancelled and the tenancy will continue. The tenant did pay a filing fee for her application and no filing fee is awarded.

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: April 29, 2016

Residential Tenancy Branch