



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, RP

Introduction

On May 19, 2016, the Tenant submitted an Application for Dispute Resolution asking that a 1 Month Notice to End Tenancy for Cause (“the Notice”) dated May 11, 2016, be cancelled, and for an order that the Landlords make repairs to the unit.

Both parties appeared at the hearing. The hearing process was explained and the participants were asked if they had any questions. Both parties provided affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and make submissions to me.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Preliminary Matters

At the start of the hearing, the Tenant’s advocate asked that the request for a repair order be severed from the application with leave to reapply. The Tenant’s request was granted.

The Landlords testified that one of the reasons for ending the tenancy selected within the Notice regarding illegal activity was selected in error and they are not pursuing it. The Notice is amended to remove the selection regarding illegal activity.

Issue to be Decided

Did the Tenant or a person permitted on the property by the Tenant seriously jeopardize the health or safety or lawful right of another occupant or Landlords?

Background and Evidence

The Landlords and Tenant testified that the tenancy began on December 1, 2015 as a fixed term tenancy. The parties did not enter into a new fixed term agreement after March 31, 2016. The Tenant is responsible to pay rent in the amount of \$900.00 per month.

The Landlords testified that the Tenant has failed to secure her two dogs which have left the Tenant's property on a number of occasions and have scared and threatened other occupants of the rental complex. The Landlords testified that the Tenant is responsible to secure her dogs on her property and that the Landlords are not responsible to build the Tenant a fence to contain the dogs. The Landlords pointed out that a term of the tenancy is that dogs remain in the Tenant's control on a leash or in a fenced area.

The Landlord C.V. testified regarding an occasion where the Tenant's two dogs charged her. The Landlords testified that the dogs had escaped from a car. The Landlords have provided documentary evidence of a text message dated March 18, 2016, between the Landlord and the Tenant. The Tenant's text message response indicates that the dogs escaped from the car.

The Landlords testified about another incident where the Tenant's dog got loose and was growling and barking at workers. The Landlords have provided documentary evidence of a text message dated April 14, 2016, between the Landlords and the Tenant. The Tenant's text message response indicates that one of her pups got let out by a friend and the worker spooked her dog and the dog barked at him.

The Landlords testified that there was an incident between the Tenant's dogs and another occupant in the complex in early May 2016, where the dogs acted aggressively. The Landlords have provided documentary evidence of a letter dated May 31, 2016, sent from occupant J.P. in the complex. The letter indicates that the occupant has had continuous interactions with the two large dogs as they are often loose and running throughout the shared space and parking area, barking and crapping in the occupant's yard. The occupant's letter states that there was an incident where her 18 year old daughter was pinned up against her car by both of the dogs as they aggressively barked and growled at her. The occupant indicates that the dogs were moving aggressively towards her daughter and that her daughter was too terrified to even move. The occupant became alerted to the incident and was able run out and chase the dogs off by yelling at them. The occupant indicates that the male owner of the dogs was able to catch them and put them on their leashes.

The Landlords testified that there was another incident between the Tenant's dogs and another occupant of the complex in May 2016, where the dogs were roaming free and acting aggressively. The Landlords have provided documentary evidence of a letter dated June 2, 2016, sent from D.F. In her letter she indicates that she was with her little shihtzu, checking her mail located just outside of her fenced area when two big dogs ran up to her and charged her. The resident indicates that she threw her shihtzu over her fence and was so scared that she jumped over her fence as well. The occupant indicates that she observes the Tenant's dogs wandering around the property unattended all the time, and that they run up and bark at cars that drive in.

A witness for the Landlords, D.R. testified at the hearing that she witnessed the incident with the dogs reported by D.F. She testified that a lady was with her small dog by her mailbox when two dogs ran over and began growling and barking. She testified that the two dogs were her neighbor's dogs.

The Tenant testified that she does her best to secure her dogs. The Tenants advocate stated that the Tenant has attempted to keep her dogs contained but the rental unit has substandard fencing.

The Tenant has provided documentary evidence of photographs showing the rental unit and the fencing around the unit.

The Tenant's advocate submits that the bar is set high to prove the allegation that the Tenant has seriously jeopardized the health or safety or lawful right of another occupant or Landlord.

The Landlords testified that if the Notice is upheld, they would be willing to give one extra month of time for the tenants to vacate the rental unit.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

I find that there is a term of the tenancy agreement that the dogs remain in the Tenant's control on a leash or in a fenced area. The Tenant is responsible to ensure her dogs are secured. The Tenant has provided insufficient evidence that the Landlord is responsible to provide her with fencing for the rental unit. I find that the Tenant has failed to take appropriate steps to secure her dogs, which has resulted in the dogs escaping and wandering in the rental complex.

I find that the Tenant's dogs have acted aggressively and have scared workers and other occupants of the rental complex on numerous occasions.

Residential Tenancy Policy Guideline # 6 states that every Tenant has the right to enjoy the possession and use of the rental premises in peace and without disturbance. A Landlord must take reasonable steps to prevent a breach of a Tenants right to quiet enjoyment.

The Landlords have an obligation to the other occupants of the complex to ensure they are not being disturbed or threatened.

I find that the Tenant's failure to properly secure her dogs has caused other occupants of the complex to feel threatened. I find that in the circumstances, the Landlords are justified in ending the tenancy to prevent future threatening behavior by the two dogs, or a physical attack by the dogs.

I find that the Tenant or a person permitted on the property by the Tenant seriously jeopardized the health or safety or lawful right of another occupant or the Landlord. I dismiss the Tenant's Application to cancel the 1 Month Notice To End Tenancy For Cause dated May 11, 2016.

Under section 55 of the Act, when a Tenant's application to cancel a Notice to end tenancy is dismissed and I am satisfied that the Notice to end tenancy complies with the requirements under section 52 regarding form and content, I must grant the Landlord an order of possession.

The effective date of the Notice is June 30, 2016; however the Landlord agreed to give the Tenants an extra month to vacate the rental unit.

I find that the Landlord's Notice complies with section 52 regarding form and content and I find that the Landlord is entitled to an order of possession effective at 1:00 pm on July 31, 2016, after service on the Tenant. This order may be filed in the Supreme Court and enforced as an order of that Court.

Conclusion

The Tenant or a person permitted on the property by the Tenant seriously jeopardized the health or safety or lawful right of another occupant or Landlord. I dismiss the Tenant's Application to cancel the Notice dated May 11, 2016.

I grant the Landlord an order of possession effective at 1:00 pm on July 31, 2016. The Tenant must be served with the order of possession. Should the Tenant fail to comply with the order, the order may be filed in the Supreme Court of British Columbia and enforced as an order of that Court.

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: June 24, 2016

Residential Tenancy Branch