



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, OPC, FF

Introduction

This was a hearing with respect to applications by the tenant and by the landlords. The hearing was conducted by conference call. The landlord and the landlord's daughter called in to the hearing. The named tenant called in and participated. An intended witness called in, but her evidence was not heard.

Issue(s) to be Decided

Should the Notice to End Tenancy for cause dated May 21, 2016 be cancelled?
Are the landlords entitled to an order of possession pursuant to the Notice?

Background and Evidence

The rental unit is the upper portion of a house in Surrey. The landlords reside in the basement of the house. The tenancy began January 1, 2016 for a one year term. The monthly rent is \$2,000.00. The tenant paid a security deposit of \$1,000.00 at the start of the tenancy. The landlord served the tenant with a one month Notice to End Tenancy for cause dated May 21, 2016. The Notice to End Tenancy required the tenant to move out by June 21, 2016, although the earliest day that the Notice could be effective is June 30, 2016. Several reasons were given in the Notice for seeking to end the tenancy. The landlord said that the tenant has significantly interfered with or unreasonable disturbed another occupant or the landlord and that the tenant has engaged in illegal activity that has damaged the landlord's property and adversely affected the quiet enjoyment of others. The landlord also said the tenant has caused extraordinary damage to the property and has breached a material term of the tenancy agreement.

The landlord's chief complaint is that the tenants have acquired a dog that lives in the rental unit. The landlords testified that pets are not allowed and they would never have agreed to rent to the tenants had they known that the tenants intended to have a pet. The landlord testified that the dog barks incessantly and disturbs the landlord and his family. The landlord testified that the dog has also caused serious damage to the landlord's yard and garden.

The landlord also testified that the tenants have disturbed other occupants of suites in the lower portion of the house, apart from the landlord's family. The landlord referred to pictures showing junk and debris deposited outside the entrance to a suite in the basement. The landlord said the tenants block the driveway with their car, preventing others from parking.

The landlord said that the tenants acquired the dog months after moving in without speaking to the landlord or asking for permission. The landlord noted that the tenancy agreement states that a pet deposit is "not applicable" because the tenants did not have a pet when the tenancy began and there was never any intention to allow a pet at any time.

The tenant testified that the tenants acquired the dog in April. The tenants did not inform the landlord or seek permission before obtaining the dog. The tenants do not agree that the dog has disturbed the landlord or other occupants, or that the dog has caused extraordinary damage to the rental property. The tenant denied leaving garbage at the entrance to another suite and said that the parking where the tenant's car is shown in a photograph is parking that is included in the tenants' rent

Analysis

The tenancy agreement does not contain an explicit pet clause, prohibiting the tenants from having a pet, or specifying the type or size of pet that may be permitted. The landlord's position is that because it was noted in the tenancy agreement that the pet damage deposit was "not applicable", this was equivalent to a clause prohibiting pets.

The landlord claimed in the Notice to End Tenancy that the tenants have engaged in illegal activity that, among other matters, has damaged the landlord's property. The landlord said that the illegal activity was the keeping of a dog, contrary to the tenancy agreement. The landlord also said this was a material breach of the tenancy agreement.

The Residential Tenancy Policy Guideline with respect to "Illegal Activities" provides that:

The term "illegal activity" would include a serious violation of federal, provincial or municipal law, whether or not it is an offense under the Criminal Code. It may include an act prohibited by any statute or bylaw which is serious enough to have a harmful impact on the landlord, the landlord's property, or other occupants of the residential property.

The landlord has not established that the tenants have engaged in any illegal activity; an alleged breach of a term of a tenancy agreement does not constitute an illegal activity.

The landlord has also claimed that the tenants have breached a material term of the tenancy agreement by keeping a dog in the rental unit without the landlord's permission. The Residential Tenancy Policy Guideline with respect to "Pet Clauses" provides that:

When a landlord feels that a tenant is breaching a pets clause by having an animal on the premises, it is not uncommon for the landlord to give the tenant a written notice to get rid of the pet. If the tenant fails to do so within a reasonable time, the landlord might give the tenant a notice to end the tenancy claiming that the tenant has breached a material term of the tenancy agreement and failed to rectify the breach within a reasonable time after being given written notice to do so ¹. Alternatively, the landlord might apply for an order that the tenant comply with the tenancy agreement ².

The landlord did not give the tenant a written notice telling the tenant to get rid of the dog within a reasonable time before he served the Notice to End Tenancy. Without making any finding with respect to whether or not this tenancy agreement may be construed as prohibiting pets, I find that because the landlord is asserting that the tenant has breached a material term of the tenancy agreement as a ground for ending the tenancy, he must first give the tenant notice in writing that he must rectify the alleged breach within a reasonable time or face eviction. The landlord has not given the tenants the required written notice and I find that the landlord has not established grounds to end the tenancy because of the breach of a material term of the tenancy agreement.

The landlord claimed that the tenant has caused extraordinary damage to the rental property. The landlord said that the tenant's dog destroyed the garden. The sole evidence of the damage is a poor quality black and white photograph of the garden area. The tenants dispute the claim. They submitted their own photo of the garden area, also of poor quality. The evidence provided is not adequate to allow me to make any finding as to the extent of damage to the garden and I decline to uphold the Notice to End Tenancy for the reason that the tenants have caused extraordinary damage to the rental property. I refer again to the Policy Guideline with respect to pets; it provides that:

It is important to note that whether or not there is a pets clause in a tenancy agreement, if a pet causes extraordinary damage, unreasonably disturbs the enjoyment of other occupants of the property or threatens the safety or other lawful rights or interests of the landlord or other occupants, the tenant might be given a notice to end the tenancy. ⁴ Similarly, if a pet causes damage that might

be less than “extraordinary damage”, the tenant might be given a notice to end the tenancy if the damage is not repaired within a reasonable time after the tenant has been given written notice to do so by the landlord.⁵

If the landlord contends that the tenant’s dog has caused significant damage to the garden or the yard, then he may consider giving the tenant notice to repair the damage and a Notice to End Tenancy in the event that the tenant does not comply.

I find that the landlord has not established that he has sufficient grounds to end the tenancy for the reasons stated in the one month Notice to End Tenancy dated May 21, 2016. I allow the tenant’s application to cancel the Notice to End Tenancy and I order that the Notice be, and is hereby cancelled. The tenancy will continue until ended in accordance with the *Residential Tenancy Act*. The landlord’s application for an order of possession is dismissed.

Conclusion

The tenant’s application has been granted. The tenant is entitled to recover the \$100.00 filing fee for his application. He may deduct the said sum from a future instalment of rent payable to the landlord.

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: July 12, 2016

Residential Tenancy Branch