



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, FF

Introduction

This hearing was scheduled to address the Tenant's application to cancel a 1 Month Notice to End Tenancy issued by the Landlord for a breach of a material term of the tenancy agreement. Both parties appeared at the hearing and testified that they received each other's evidence. Both parties were provided the opportunity to make relevant submissions, in writing and orally pursuant to the Rules of Procedure, and to respond to the submissions of the other party.

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.

Issue to be Decided

- Did the Tenant breach a material term of the tenancy agreement that was not corrected after a reasonable time after written notice to do so?

Background and Evidence

The Tenant testified that she purchased the manufactured home in August, 2009, and the Tenant and Landlord entered into an agreement for the Tenant to rent a manufactured home site on a month to month basis. The Tenant pays the Landlord rent in the amount of \$429.90 each month.

1 Month Notice to End Tenancy for Cause

On January 18, 2017, the Landlord served a 1 Month Notice to End Tenancy for Cause (the Notice) to the Tenant in person. The Landlord indicates the following reason for ending the tenancy on the Notice:

- *Breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.*

The Tenant received the Notice on January 18, 2017, and disputed the Notice within the applicable timeframe.

The Landlord testified that the Tenant moved out of the manufactured home and rented the unit to an occupant who has two dogs. The Landlord testified that before the park owner could make a decision on approving the dogs, the occupant moved in. The Landlord decided to allow the occupant to keep the dogs on a trial basis. The Landlord testified that the dogs are loud and aggressive and the occupant has not controlled them as they have gotten out of the yard and roamed free in the manufactured home park.

The Landlord also testified that the occupant has allowed other occupants to live in the manufactured home and the Landlord has concerns about the amount of people living in the unit and coming and going.

The Landlord testified that the dogs became a problem. The Landlord received complaints about the dogs from other residents. The Landlord testified that the dogs are constantly barking and disturbing other residents. The Landlord testified that the dogs have gotten out of the yard and have acted aggressively towards people.

The Landlord testified that the occupant also got two cats without approval. The Landlord testified that because of the barking and the occupant's inability to control the dogs, the Landlord withdrew consent for the dogs and asked the occupant to get rid of the dogs and cats.

The Landlord testified that on September 5, 2016, the Landlord sent the Tenant a letter stating that the park owner is withdrawing approval of the dogs. The letter states the Tenant must remove the dogs according to park rule #24. The Landlord provided a copy of the letter.

The Landlord provided a copy of a letter sent to the occupant dated October 19, 2016, that documents an incident where the occupant's dogs got loose and acted aggressively

towards the park owner. The Letter directs the occupant to have the dogs removed immediately.

The Landlord testified on November 9, 2016, a letter was sent to the Tenant, enclosing the tenancy agreement and park rules and giving the Tenant until December 30, 2016, to comply with the park rules. The Landlord provided a copy of the November 9, 2016, letter as well as a copy of the highlighted park rules.

The tenancy agreement between the parties includes a term that the Landlord may terminate the tenancy upon thirty days' written notice in the event of: a failure to comply with the Lease or Rules; or failure to comply with any future rules here after adopted by the Landlord.

The Park Rule #24 states that the pet population is controlled by the Landlord. The Landlord may at any time withdraw its approval of any pet of the Tenant. The Landlord shall not be required to give any reason for its withdrawal. If a Landlord withdraws its approval the Tenant shall remove the pet in question within 48 hours of receiving notice of Landlord's withdrawal of its approval.

The Landlord testified that the rules regarding pets have been enforced against other Tenants within the Park.

In response, the Tenant testified that when she moved into the manufactured home park, she was made aware of the park rules and she is aware of the park rules regarding pets.

The Tenant testified that in December 2015, she spoke to the Landlord about renting out the manufactured home to a person with two dogs. She testified the Landlord gave verbal approval for the dogs. She testified that at the end of February 2016, she rented the manufactured home to the occupant.

The Tenant wrote a letter to the Landlord dated September 23, 2016, after receiving the Landlord's letter dated September 5, 2016. The Tenant was seeking an explanation why the Landlord is withdrawing the verbal approval of the Occupant's dogs. In the letter, the Tenant acknowledges that the dogs had gotten loose and that they bark.

The Tenant testified that after she received the Landlord's letter dated November 9, 2016, she spoke to the occupant about the breaches and the park rules. The Tenant testified that she never knew the dogs were getting loose.

The Tenant testified that the occupant was in an accident and suffers from post-traumatic stress disorder. She testified that the dogs are registered emotional support dogs. The Tenant provided documentary evidence of print outs from an internet site that state the dogs are registered as emotional support dogs.

The Landlord submitted that he is willing to allow the tenancy to continue if the Tenant gets rid of the dogs.

Analysis

Section 18 of the *Manufactured Home Park Tenancy Act* (the Act) states:

A tenancy agreement may include terms or conditions doing either or both of the following:

(a) prohibiting pets, or restricting the size, kind or number of pets a tenant may keep on the manufactured home site;

(b) governing a tenant's obligations in respect of keeping a pet on the manufactured home site.

(2) This section is subject to the [Guide Dog and Service Dog Act](#).

The Guide Dog and Service Dog Act states that a "service dog" means a dog that

(a) is trained to perform specific tasks to assist a person with a disability, and

(b) is certified as a service dog;

Section 6 of the *Guide Dog and Service Dog Act* states:

the registrar may issue or renew a certificate referred to in section 5 (1), in a form satisfactory to the registrar, if the registrar is satisfied that the individual or the dog, or both, as the case may be, identified in the certificate meet all of the conditions, qualifications and requirements imposed under this Act and the regulations.

The Landlord issued the 1 Month Notice To End Tenancy due to a breach of a material term.

Residential Tenancy Policy Guideline #8 Unconscionable and Material Terms states:

A material term is a term that the parties both agree is so important that the most trivial breach of that term gives the other party the right to end the agreement.

I find that the tenancy agreement signed by the Tenant includes a term that the Landlord may terminate the tenancy upon thirty days' written notice in the event of: a failure to comply with the Lease or Rules; or failure to comply with any future rules adopted by the Landlord.

I find that the Tenant was aware of the park rule #24 that the Landlord may at any time withdraw its approval of any pet of the Tenant.

I find that the Tenant agreed that compliance with the park rules is a material term of the tenancy agreement.

I find that the section 18 of the Act permits the Landlord to prohibit, restrict, and govern pets on a manufactured home site. I find that this section is subject to the *Guide Dog and Service Dog Act*, however, there is insufficient evidence that the occupant's dogs are certified by the Registrar under the *Guide Dog and Service Dog Act*. I find that the Landlord can prohibit, or restrict, the Tenants and/or occupants dogs.

The Landlord provided the Tenant with two letters to remove the dogs and to comply with the tenancy agreement and the park rules prior to issuing the 1 Month Notice to End Tenancy.

I find that the Landlord has proven that there are grounds to end the tenancy for a breach of a material term of the tenancy agreement regarding pets.

I dismiss the Tenant's Application to cancel the 1 Month Notice to End Tenancy for Cause dated January 18, 2017. Under section 55 of the Act, when a Tenants 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.

I find that the Landlord is entitled to an order of possession, pursuant to section 55 of the Act. Since the Landlord expressed his willingness to allow the tenancy to continue if the dogs are removed, the order of possession is conditional.

I order the Tenant to comply with the Landlord's direction to remove the dogs from the manufactured home park.

The Tenant must comply with my order by March 31, 2017. If the dogs are not removed from the manufactured home park by March 31, 2017, the Landlord may serve the order of Possession on the Tenant. This order may be filed in the Supreme Court and

enforced as an order of that Court. The Tenant is cautioned that costs of such enforcement are recoverable from the Tenant.

With respect to the allegations regarding unauthorized occupants coming and going from the unit, there is insufficient evidence from the Landlord to establish that the visitors were occupants rather than guests.

Conclusion

The Tenant must comply with the material term of the tenancy agreement that permits the Landlord to prohibit the number of pets a Tenant may keep on the manufactured home site.

The Landlord is granted a conditional order of possession that may be served to the Tenant if the occupant's dogs are not removed from the manufactured home park by March 31, 2017.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Manufactured Home Park Tenancy Act*.

Dated: February 27, 2017

Residential Tenancy Branch