



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding MULBE

RRY PARK DEVELOPMENTS LTD **DECISION**

Dispute Codes O, FF

Introduction

The landlord applies for an order compelling the tenant to remove his dog from the manufactured home park.

All parties attended the hearing and were given the opportunity to be heard, to present sworn testimony and other evidence, to make submissions, to call witnesses and to question the other. Only documentary evidence that had been traded between the parties was admitted as evidence during the hearing.

Issue(s) to be Decided

Does the landlord have lawful grounds for requiring that the tenant remove his dog?

Background and Evidence

The manufactured home site is one of about 75 in a manufactured home park. The applicant Ms. K.B. is the park manager. She is not the tenant's landlord.

There is a written tenancy agreement. The tenancy started in June 2009. The current monthly rent is \$410.00.

The tenancy agreement contains a pet clause, clause 7, which reads:

The landlord has approved the following pet(s): 1 TERRIER MIXED DOG
As a material term of this Agreement, the Tenant agrees to adhere to all Park Rules regarding pets and agrees to obtain the Landlord's approval in writing before bringing any pet into the Park, except for small indoor caged birds or animals, or fish in an indoor tank. Where the Landlord has given permission for any pet in writing, the Tenant shall

ensure that the pet does not disturb other persons in the Park or adjoining property in regard for the quiet enjoyment of the other tenants, occupants and invited guests in the Park. If the Tenant fails to control the pet within the meaning of this Section and the Park Rules, the Tenant may be required to remove the pet from the Park within two weeks of receiving written notice from the Landlord to do so, or such other penalties as are provide in the MHPTA.

The Park rules provide that approval for any pet is for that animal only and that every new pet requires prior written approval by the landlord.

On the afternoon of October 24, 2016 Ms. C.K., another tenant in the park, was outside with her son and her dog when the tenant's dog, approached and a dog fight ensued. It is apparent that the tenant's dog was off leash and some two hundred feet from the tenant's yard. It appears that Ms. C.K., her son and her dog, were in Ms. C.K.'s driveway or at its edge. While her dog was not on a leash, it was under her direct control and was not at large.

Ms. C.K.'s dog was significantly injured in the fight, which Ms. C.K. describes as an attack by the tenant's dog, which she describes as a "pit-bull."

Veterinarian and travel bills in excess of \$1200.00 were incurred as a result. The tenant has been gracious enough to reimburse Ms. C.K. for almost all those costs.

On November 28, 2016 the landlord issued a notice to the tenant citing clause 7 of the tenancy agreement and requesting that he remove his dog form the park on or before December 15, 2016. The tenant did not comply.

After that it appears that there was some discussion between the parties about the tenant obtaining a professional assessment of his dog's temperament.

Discussions did not resolve the issue and on January 16, 2017 the landlord issued another notice letter requiring the tenant to remove the dog from the park by January 20, 2017. The tenant has not complied.

Ms. E.R. for the landlord presents evidence to indicate that the dog in question is not the same dog referred to in the 2009 tenancy agreement; that the original dog passed away in the spring of 2016 and the dog in question is a new dog that has not been approved in writing by the landlord.

The tenant testifies that it is the same dog and that but for the October incident it has been problem free since he moved into the park in 2009.

He says that on October 24 his dog escaped from his manufactured home when a strong wind storm caused the door to blow open. He says he has taken significant steps to prevent another escape, keeping his dog in a crate when he is not home.

He says that the dog is a “therapy dog” and that he has a note from his doctor to confirm that he needs the dog to help him deal with an anxiety disorder. He says he was unable to file the note as evidence in time for this hearing.

Analysis

The landlord has framed its argument around s. 40 of the *Manufactured Home Park Tenancy Act* (the “*Act*”) and the grounds regarding unreasonably disturbance and significant interference to justify the eviction of a tenant.

As the landlord is not seeking to evict the tenant, in my view, those grounds are not particularly relevant.

The landlord argues that this is a new dog and the tenant does not have prior written approval for it. On the competing evidence it has not been shown on balance of probabilities that this is not the original dog and so that argument fails.

I dismiss the tenant’s argument that the dog is a “therapy dog.” The *Act*’s provisions about pets are subject to the *Guide Dog and Service Dog Act*. That *Act* prohibits discrimination against a tenant based on his having a certified guide dog or service dog. There is no evidence that the dog in question has been certified as either or that the landlord is discriminating on that basis. There is no substantive evidence to corroborate that the tenant requires the dog for any medical or psychological purpose or that even if he does, he should thus be exempt from the terms of the tenancy agreement he has signed.

Section 18 of the *Act* provides that a tenancy agreement may contain terms prohibiting pets, or restricting the size, kind or number of pets a tenant may keep on the manufactured home site and governing a tenant’s obligations in respect of keeping a pet on the manufactured home site.

It is apparent that the landlord has gone to significant length in its standard tenancy agreement to control pets in the Park. All pets must have prior written approval. New pets must be approved. The Park Rules speak of “banned breeds” and “pet size,” prohibiting dogs of “large or medium breeds” and requiring tenants to have a dog license from the local government under its bylaws. Pets must be on leash outside a tenant’s fenced yard. Pets that are noisy, unruly, run at large or cause complaints must be removed within two weeks on written notice.

The *Act* permits terms such as these to enable a park owner to keep a firm hand on pets in the park.

In this case, I find that the tenant has failed to control his dog within the meaning of clause 7 of the tenancy agreement and the landlord is warranted in requiring that he remove the dog from the park. The fact that the dog was at large through an accident might be a mitigating factor to be considered by a landlord before formally requiring a dog to be removed, but it is not a significant factor in the determining that the tenant has failed to control his pet.

I find that the landlord was within its contractual rights to require removal of the tenant's terrier dog in these circumstances.

I order that the tenant remove and keep removed his terrier dog from the park by March 31, 2017.

In the event of non-compliance with this order, the landlord is free to proceed under s. 40(1)(k)(ii) of the *Act*.

Conclusion

The landlord's application is allowed.

The landlord is entitled to recover the \$100.00 filing fee for this application. It will have a monetary order against the tenant in that amount.

This decision was rendered orally at hearing and 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: March 01, 2017

Residential Tenancy Branch