



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, MNDC, FF

Introduction

This hearing was convened to deal with an application by the tenants pursuant to the *Residential Tenancy Act* (the “Act”) for an order cancelling a 1 Month Notice to End Tenancy for Cause (the “1 Month Notice”), for compensation for loss or damage under the Act, Regulation, or tenancy agreement, and for recovery of the application filing fee.

Both of the tenants and two property managers attended and had full opportunity to be heard, to present affirmed testimony, to make submissions, to present documentary evidence, and to respond to the submissions of the other party.

Service of the tenants’ application, amended application, and notice of hearing was not at issue. Both parties also acknowledged having received the evidence of the other party, with the exception of the fact that the tenants had not served the landlord with their photographic evidence. The tenants’ photographs were therefore not considered.

Issue(s) to be Decided

Are the tenants entitled to an order cancelling the 1 Month Notice?

Are the tenants entitled to compensation?

Are the tenants entitled to recover the application filing fee?

Background and Evidence

It was agreed that this tenancy began on March 1, 2017 for a term expiring January 31, 2017. Rent is \$3,100.00 monthly and due on the first of each month. A security deposit of \$1,550.00 and a pet damage deposit of \$1,000.00 were paid at the beginning of the tenancy and remain in the landlord’s possession.

The written tenancy agreement was in evidence. It includes a pet agreement addendum, under which the tenants agree (among other things) to keep their pets from being noisy or aggressive and from causing any annoyance or discomfort to others and to immediately remedy any complaints made about their pets. The pet addendum also states that the owners reserve the right to revoke permission to keep the pets and/or terminate the tenancy if the tenants break the commitments set out in the addendum.

Section 18 of the tenancy agreement states that “.the tenant or the tenant’s guest must not disturb, harass, or annoy another occupant of the residential property, the landlord or a neighbour . . .”.

The 1 Month Notice was served on the tenants on March 31, 2017, and the tenants applied to dispute it within the applicable time limit. It has an effective date of April 30, 2017. One of the property managers testified that the landlord has accepted rent for May for “use and occupancy only.”

The 1 Month Notice indicates that the tenants have “significantly interfered with or unreasonably disturbed another occupant or the landlord” and have breached a material term of the tenancy agreement and failed to correct that breach within a reasonable time after written notice of same.

One of landlord’s property managers testified that on March 16, 2017, their office received a complaint from one of the tenants’ neighbours about “nonstop barking” by the tenants’ dogs, and that the property manager who took the call from the complaining neighbor could hear the barking over the phone.

On March 17, 2017 the property management company sent the tenants a warning letter by email and regular mail about this complaint. The letter begins by advising that the management company has received a “serious complaint regarding noise from your dogs yesterday (March 16, 2017).” The letter then reminds the tenants of their obligations as set out in s. 18 of the tenancy agreement and in various sections of the pet agreement addendum. It also points to a section of the applicable municipal bylaw requiring pet owners to keep their pets reasonably quiet. The letter then advises the tenants that they must adhere to the terms of the agreement and addendums, insists that they “make the necessary adjustments to ensure that your tenancy moves on in a positive manner” and cautions that failure to do so “will result in your being issued a Notice to End Tenancy.”

Also on March 17, 2017 one of the property managers attended at the rental property to investigate. She testified that she sat outside the property at the end of the tenants’ long driveway at approximately 4:30 pm and heard “nonstop” barking coming from the property for the 10 minutes she was there. She further testified that she attended again on March 18 at approximately 3:30 pm, and could hear the tenants’ dogs barking from

approximately a block away. She then walked back-and-forth around the road adjacent to the property for approximately five minutes during which the dogs barked “nonstop” again. She also said that she attended again the following day and heard intermittent dog barking for the five minutes that she was there.

One of the property managers further testified that on March 28, 2017 the company received a phone call and an email from one of the neighbours. The email described the dogs barking at 11:00 pm on March 18. It also said that on March 24, 25, and 26 “the dogs were let out in their compound in the afternoons and barked continuously” and that on March 27 “the dogs were let out at 11:00 am until early evening, and barked.” A copy of the email was in evidence.

The property manager also testified that on March 29, 2017 the company wrote to the tenants asking that they sign a mutual agreement to end the tenancy. On March 30, 2017 the tenants responded to that letter and rejected the idea of a mutual agreement to end tenancy. They offered to put up a fence of another side of their property to address one of the neighbour’s concerns that their dog was throwing himself against the shared fence. The tenants also say that it feels unfair to be given a month’s notice “based on the neighbours not liking our dogs or us. They barely bark and I don’t feel they are noisy.” A copy of this email was in evidence.

At the hearing, the tenants testified that they do not believe their dogs bark in a disruptive way. The female tenant said that she is home the majority of the time and she does not observe the dogs barking. She says that the dogs are often inside the home and that after they received the March 17 warning letter they made more of an effort to keep the dogs inside. In written submissions the tenants say that they made the effort to keep the dogs inside “for the next week.”

The tenants also questioned how the property manager who investigated could have understood that the barking she heard was coming from their dogs in light of the fact that she could not see down the driveway to the dogs. And they say that their dogs are more likely to bark when someone is trespassing or close to the property.

The tenants also say that the dogs only arrived on the rental property on March 8 and that they have since acclimatized to their home. However, property managers disagreed that the dogs have become quieter. They pointed out that there are complaints in their evidence from April 12 and April 19, 2017. The April 12 email complaint is from one of the tenants’ closer neighbours. It sets out 11 dates between March 28 and April 11 when the barking was of concern. It also attaches a copy of the applicable municipal bylaw, which states that no dog owner “shall permit or cause the dog to cry or bark in a manner which disturbs the quiet, peace, rest, enjoyment, comfort or convenience of the neighbourhood or of persons in the vicinity of the place where the dog is kept.”

The April 19 email complaint includes the following: “Regarding the dogs, they bark whenever we go outside, walk up our driveway, or walk on our dock. The dogs barked

off and on this past long weekend while we were outside gardening. They bark when we or our tenant get into our vehicles. . . ”.

The property managers also advised that they received another complaint on April 29, although they have not included that complaint in evidence. They say that the April 29 complaint states that the tenants’ dogs are still barking “like crazy and long into the night.”

The tenants responded that their dogs are always inside after 5:00 pm and sleep inside the house, so this late-night barking could not have been from them. They also said that there are other dogs in the neighbourhood and it is not necessary the case that their dogs are the ones disrupting the neighbours.

The tenants allege that one of the two neighbours who has complained would not have done so had there not been a disagreement around where the tenants could erect a fence, and that the property managers were responsible for that disagreement.

The tenants seek compensation for investments they have made in the rental unit property in reliance on the 11 month term. Specifically, they seek compensation for the installation of new carpeting, the installation of fencing, and treatment for spiders.

The landlord’s response to the monetary claims is that the tenants chose to install the carpet and fencing and that the property management company received no notice of any need to treat for pests.

Analysis

Section 47(1)(d)(i) of the Act allows a landlord to end a tenancy for cause where the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord. The landlord has indicated only that neighbours on neighbouring properties have been disrupted. Accordingly, the landlord has not established that there is cause to end the tenancy under this section of the Act.

However, I accept that there is cause to end this tenancy under s. 47(1)(h) of the Act. I accept that the tenants’ commitment to keep their dogs from disturbing or annoying neighbours or others is a material term of the tenancy agreement. It is set out clearly in the pet agreement addendum and in the tenancy agreement itself. It is also consistent with the municipal bylaw.

The landlord gave the tenants written notice of their breach of this material term on March 17, 2017. The tenants did not respond to that notice, although they could have.

The landlord has submitted evidence from three different parties that the dogs' barking is disruptive. Although the tenants note that there are other dogs in the neighbourhood and the property manager did not travel down their long driveway to confirm that the barking that she heard was coming from their dogs, I am satisfied on a balance of probabilities and in light of all of the evidence that the tenants' dogs are significantly disruptive and are annoying and disturbing the neighbours. The complaining neighbours appear to be responding to a new annoyance in their neighbourhood, other neighbourhood dogs are unlikely to be causing the noise.

I also note that the tenants did not submit any documentary or audio evidence that their dogs were not noisy. Nor did they submit any witness statements or call any witnesses. Additionally, the tenants gave no evidence of any attempts to control or minimize their dogs' barking except for their efforts to keep them indoors more often for the week after the March 17, 2017 warning letter.

Section 55 of the Act requires me to issue an order of possession where the landlord's notice to end tenancy is upheld provided it complies with s. 52 of the Act. I find that it complies with s. 52. As the tenants have paid rent for May for use and occupancy, I issue an order of possession for the landlord effective at 1:00 pm on May 31, 2017.

I make no award for the amounts claimed by the tenants. This is because the tenancy has ended as a result of their conduct, not because the landlord has breached the Act, regulation, or tenancy agreement. The landlord cannot be responsible for losses incurred by the tenants that were not the landlord's fault.

I also note that the tenants did not follow the required steps under s.33 of the Act in order to be able to claim the costs of pest control as emergency repairs.

Conclusion

The tenant's application to cancel the 1 Month Notice is dismissed. The 1 Month Notice is upheld. I issue an order of possession in favour of the landlord effective at 1:00 pm on May 31, 2017. The tenants must be served with this order as soon as possible. Should the tenants or anyone on the premises fail to comply with this order, this order may be filed and enforced as an order of the Supreme Court of British Columbia.

The tenants' application for monetary compensation is also dismissed.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under s. 9.1(1) of the Act. Pursuant to s. 77 of the Act, a decision or an order is final and binding, except as otherwise provided in the Act.

Dated: May 18, 2017

Residential Tenancy Branch