



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding GREATER VICTORIA HOUSING SOCIETY
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC

Introduction

This hearing dealt with an application by the tenant pursuant to the *Residential Tenancy Act* ("the Act") for an order as follows:

- to cancel a 1 Month Notice to End Tenancy given for Cause ("1 Month Notice") pursuant to section 47 *Act*;

Both the tenant and the landlord appeared at the hearing. The landlord was represented at the hearing by manager of tenant relations, Y.B (the "landlord"). Both parties present were given a full opportunity to be heard, to present their sworn testimony and to make submissions under oath.

The landlord testified that the tenant was served with a 1 Month Notice to End Tenancy for Cause in person on July 28, 2017. Pursuant to section 88 of the *Act*, I find the tenant was duly served under the *Act*.

On August 11, 2017, the landlord received a copy of the tenant's application for dispute resolution by way of Canada Post Registered Mail. Pursuant to section 89 of the *Act*, the landlord is found to have been duly served with the tenant's application for dispute resolution.

Issue(s) to be Decided

Can the tenant cancel the landlord's notice to end tenancy? If not, should an Order of Possession be granted?

Background and Evidence

Testimony provided at the hearing by both parties explained that this tenancy began in October 2003. Rent is \$600.00 per month and no security deposit was collected at the outset of the tenancy.

The landlord explained that a Notice to End Tenancy for Cause had been served on the tenant for the following reasons:

- Breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so; and
- Non-compliance with an order under the legislation within 30 days after the tenant received the order or the date in the order.

During the course of the hearing the landlord explained that she had received a phone call complaining of the presence of a dog in the rental building. Specifically, the landlord explained this phone call was received in early July 2017 and was followed by anonymous letter received on July 28, 2017 questioning, "why the guy with the dog and red truck who was evicted end of May get to park as a visitor?" Furthermore, the landlord said that security footage from the building's cameras showed a gentleman with a dog using a fob to enter the building on multiple occasions on July 18, 2017. In addition to this evidence, the landlord cited a second anonymous complaint that had been filed with the housing society which explained that, "her husband with dog have stayed her (sic) for over 10 mth."

After having reviewed the security footage, and having spoken with the property's caretaker, the landlord wrote a letter to the tenant dated July 6, 2017. This letter described the Dispute Resolution Hearing that the parties had attended and the settlement agreement that they had reached. It continued by saying, "On July 5, 2017, the dog was seen exiting your unit. This is a breach of your Tenancy Agreement as well as the Settlement Agreement we reached... This letter is your only warning. If the dog is seen on the property again we will issue a Notice to End Tenancy and will proceed with the eviction process."

The landlord noted that in May 2017 the parties had entered into a settlement agreement whereby the tenant agreed that the extra occupant and his dog would be removed from the rental property by May 31, 2017. The parties agreed that the dog could not return to the rental property, and the tenant agreed that guests could not visit more than 14 days per 12 month period.

The tenant denied that any other person was occupying the rental unit. The tenant acknowledged that she did, on occasion have a male visitor who came to the apartment, but she maintained that he would only remain in the unit briefly and it was often only to use her bathroom and facilities. The tenant said she did not presently know where this gentleman was, and that he had not been living with her in the unit. The tenant confirmed that this gentleman had on occasion brought a dog to the building but she informed that he had been instructed to leave the dog in the truck.

Analysis

The landlord explained that a Notice to End Tenancy for cause was issued to the tenant because she had breached a material term of the tenancy agreement and had not complied with an order under the legislation, specifically a Settlement Agreement the parties reached in May 2017.

Residential Tenancy Policy Guideline #8 discusses material terms in a tenancy agreement. It 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.

To determine the materiality of a term during a dispute resolution hearing, the Residential Tenancy Branch will focus upon the importance of the term in the overall scheme of the tenancy agreement, as opposed to the consequences of the breach. It falls to the person relying on the term to present evidence and argument supporting the proposition that the term was a material term.

To end a tenancy agreement for breach of a material term the party alleging a breach must inform the other party in writing:

- that there is a problem;
- that they believe the problem is a breach of a material term of the tenancy agreement;
- that the problem must be fixed by a deadline included in the letter, and that the deadline be reasonable; and
- that if the problem is not fixed by the deadline, the party will end the tenancy.

While the landlord's evidentiary package contained a warning letter dated July 6, 2017 written by the landlord to the tenant, it failed to incorporate any sort of deadline by which to rectify the tenant was to rectify the situation. *Residential Tenancy Policy Guideline #8* notes that not only must a problem be fixed by a deadline, but that deadline must be *reasonable*. I do not find that a single warning letter is reasonable notice. In addition, I find based on the landlord's testimony and evidentiary package that the landlord has relied on second-hand, anonymous complaints regarding the presence of a dog in the building.

No testimony or submissions were presented at the hearing by the building's caretaker concerning the presence of this gentleman or a dog in the building. There are no reports of a dog barking, nor are there any reports of anyone actually seeing the dog in the building. Still images recovered from a security camera on July 17, 2017 purporting to show an unauthorized gentleman and a dog entering the building are of poor quality and it is impossible to determine based on these images alone if this person and the dog are simply visiting the suite as stated by the tenant, or if they are living in the building. For these reasons, I am dismissing the landlord's Notice to End Tenancy for a breach of a material term.

The second aspect of the landlord's Notice to End Tenancy concerns non-compliance with an order under the legislation within 30 days after the tenant received the order or the date in the order. In May 2017, the parties entered into a settlement agreement whereby the tenant agreed to remove the dog from the rental property by May 31, 2017, agreed that the dog could not return to the rental property and agreed not to allow a guest to stay over 14 days during a 12 month period.

The question before me is whether the tenant failed to comply with the terms of the settlement. I do not place great weight on the anonymous tips reported to the landlord and I find that the landlord had relied heavily on these anonymous tips when considering the presence of an unauthorized occupant and dog.

During the course of the hearing the tenant denied that anyone other than herself was occupying the rental unit, and rejected any suggestion that a dog resided in her unit. She said that she could not explain the presence of a dog pictured on July 17, 2017 but noted that she had instructed the gentleman who visits her to refrain from bringing his dog on the property. The tenant acknowledged that gentleman does come to visit early in the mornings, but said that he does not stay over and that the normal practice for this person is to leave the dog in his truck.

I found the tenant to be a credible witness, and accept her testimony. I find that the tenant was aware of the settlement agreement and made efforts to ensure that the dog was not in the rental property and that no person other than herself occupied the rental unit. For these reasons, I am dismissing the landlord's notice to end tenancy for non-compliance with an order under the legislation.

Conclusion

The tenant was successful in cancelling the landlord's notice to end tenancy. This tenancy shall continue until it is ended in accordance with the *Act*.

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: October 6, 2017

Residential Tenancy Branch