



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding 365952 BC LTD
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPC, CNC

Introduction

The landlord and the tenant convened this hearing in response to applications.

The landlord's application is seeking an order as follows:

1. For an order of possession.

The tenant's application is seeking an order as follows:

1. To cancel a One Month Notice to End Tenancy for Cause (the "Notice"), issued on February 17, 2018.

Both parties appeared, gave affirmed testimony, and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions at the hearing.

In a case where a tenant has applied to cancel a notice for cause Residential Tenancy Branch Rules of Procedure require the landlord to provide their evidence submission first, as the landlord has the burden of proving cause sufficient to terminate the tenancy for the reasons given on the notice.

I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure. I refer only to the relevant facts and issues in this decision.

Issue to be Decided

Should the Notice, be cancelled or upheld?

Background and Evidence

The tenancy began on August 1, 2016. Current rent in the amount of \$1,400.00 was payable on the first of each month. A security deposit of \$700.00 and a pet damage deposit of \$700.00 were paid by the tenant

The parties agree that the Notice was served on the tenant indicating that the tenant is required to vacate the rental unit on March 30, 2017.

The reason stated in the notice to end tenancy was that the tenant has:

- significantly interfered with or unreasonably disturbed another occupant or the landlord; and
- seriously jeopardized the health or safety or lawful rights of another occupant or the landlord.

The landlord testified that when they were at the tenant's rental unit on January 17, 2018, the tenant's dog lunged at them, when it broke loss from its collar. The landlord stated that since that day the tenant has been instructed to have the dogs kennelled or locked in a different room when they or any workers attend their rental unit.

The landlord testified that the tenant's dog bite a service worker on January 26, 2018. The landlord stated that there are young children in the building and they are concerned that the tenant's dog will bite them.

P-B witness for the landlord testified that on January 26, 2018, they were at the exit door of the building when the tenant came out with their dogs. P-B stated that the tenant's dog lunged and bites them in the leg. P-B stated that the tenant said to them at the time "someone does not like you" and left. Filed in evidence are photographs of the bite.

The tenant testified that this is the first time that they are hearing that their dogs lunged at the landlord on January 17, 2018. The tenant stated that they had the dogs in the bedroom when the landlord attended.

The tenant testified that on January 26, 2018, they were exiting the building and their dogs did bark and lunge at the service worker. The tenant stated that the service worker never indicated that they were bitten at the time. The tenant stated that the service worker simply said to control your dogs.

The tenant testified that it was later that they were informed that the service worker was bitten. The tenant stated that they wanted medical evidence and they wanted the service workers' doctor to call their vet.

The tenant testified that they have two french bulldogs that are less than 20 pounds and that the female is very protective of them. The tenant stated that both dogs have anxiety and are currently on medication.

Analysis

Based on the above, the testimony, and evidence, and on a balance of probabilities, I find as follows:

After considering all of the written and oral submissions submitted at this hearing, I find that the landlord has not provided sufficient evidence to show that the tenant has:

- significantly interfered with or unreasonably disturbed another occupant or the landlord; and
- seriously jeopardized the health or safety or lawful rights of another occupant or the landlord.

The tenant has two french bulldogs that have behaviour problems, such as barking and lunging at people. When I, the Arbitrator, questioned the tenant during the hearing, I found the tenant too minimize their dogs' actions and try to avoid direct questions.

I accept the tenant's dogs barked and lunged at the service worker on January 26, 2018, I find it was more likely than not that the dog pinched the leg of the worker, rather than bite, as the skin in the photograph is pink and there appears to be no puncture wound.

I do not find that this seriously jeopardized the health or safety of the landlord's worker. I find there was no evidence to support the tenant significantly interfered with or unreasonably disturbed another occupant or the landlord. I find the landlord has failed to prove the Notice. Therefore I grant the tenant's application to cancel the Notice. The Notice has no force or effect. The tenancy will continue under the Act until legally ended.

Since I have granted the tenant's application to cancel the Notice, I find the landlord is not entitled to an order of possession. Therefore, I dismiss the landlord's application. The landlord is not entitled to recover the filing fee from the tenant.

However, I find the action of these dogs to be unacceptable and the landlord has the right to be concerned about other occupants in the building, especially when the tenant minimizes their dogs' actions and they are on medications to treat their anxiety already. Simply because they are small dogs does not give them the right to bark, lunge, or possibly bite someone.

Therefore, I find it appropriate in this matter to make the following orders, recommendation, and caution, as the evidence of both parties, support the dogs have behaviour and anxiety problems.

I **Order** the tenant that by **May 1, 2018**, to have both dogs muzzled, leashed and under their control **at all times**, when outside of the rental unit and on the landlord's property. This includes all common areas inside and outside the building.

I **Order** that the tenant is to have both dogs secured by kennel or locked in a different area of their rental unit when the landlord has given notice to enter the rental unit.

Should the tenant fail to comply with my Orders, the landlord may issue a new notice to end tenancy.

I further **recommend** that the tenant participate in a behaviour training class, in the attempt to correct their dogs' behaviour.

I further **caution** the tenant that they are responsible for the actions of their dogs at all times.

Conclusion

The tenant's application to cancel the Notice is granted. The landlord's application for an order of possession is dismissed.

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: April 12, 2018

Residential Tenancy Branch