



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding BENCHMARK PROPERTIES
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes

CNC

Introduction

This hearing dealt with an Application for Dispute Resolution by the tenant to cancel a One Month Notice to End Tenancy for Cause (the "Notice") issued on May 31, 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 to me.

Preliminary and Procedural matter

In this matter the application file for dispute resolution has listed four (4) tenants. However, only T-D and J-M are listed as tenants on the tenancy agreement. I find J-K, J-T and T-T are not tenants under the Act and have no legal rights. Therefore, I have removed J-K, J-T and T-T from the style of cause.

At the start of the hearing only T-D appeared and gave permission for J-T to act as agent on their behalf. T-D exited the hearing and the hearing continued in their absence.

Rule 2.3 of the Residential Tenancy Branch Rules of Procedure authorizes me to dismiss unrelated disputes contained in a single application. In these circumstances the tenant indicated several matters of dispute on the Application for Dispute Resolution, the most urgent of which is the application to set aside the Notice to End Tenancy. I find that not all the claims on this Application for Dispute Resolution are sufficiently related to be determined during these proceedings. I will, therefore, only consider the tenant's request to set aside the Notice to End Tenancy. The balance of the tenant's application is dismissed, with leave to reapply.

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 to end tenancy be cancelled?

Background and Evidence

The tenancy began on September 1, 2016. Rent in the amount of \$2,500.00 was payable on the first of each month. A security deposit of \$1,225.00 was paid by the tenant.

The parties agreed that the Notice was served on the tenant indicating that the tenant is required to vacate the rental unit on June 30, 2018. However, as the Notice was not served on the tenant until June 1, 2018, that date automatically corrects under the Act to July 31, 2018.

The reason stated in the notice to end tenancy was that the tenant or a person permitted on the property by the tenant has:

- Seriously jeopardized the health or safety or lawful right of another occupant or the landlord.

The landlord testified because of an incident that occurred on May 23, 2018, they are wanted to end the tenancy.

The landlord testified that one of their employees was on a common area of the property when they were attacked by the one of the tenant's roommate's two (2) dogs causing severe bites and bruising to their stomach and leg. The landlord testified that their employee had to go to the hospital because of the bites. Filed in evidence are photographs of the dog bites, which supports the dog bites were severe. Filed in evidence is a statement of the incident by the employee.

The landlord testified that they wanted to meet directly with the tenancy T-D to work out a solution to this problem, such as having the dogs removed from the property; however, T-D would not meet with them unless J-T, the dog's owners could be present. The landlord stated that as the dog owner is not a tenant and was the subject of the discussion they determined that was not appropriate. The landlord stated T-D would not meet with them in person to resolve the matter and as a result they issued the Notice, as they cannot enter the property for fear of attack by the dogs.

The tenant's agent testified that they were in the backyard with a few friends having a barbeque and some of the girls were sun tanning. The agent stated that the landlord's employee walked by the gate scaring the girls. The agent stated that the dogs started to bark and went after the employee. The agent does not deny the dog attack.

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 provided sufficient evidence to show that the tenant or a person permitted on the property by the tenant has:

- Seriously jeopardized the health or safety or lawful right of another occupant or the landlord.

In this case the tenant's roommate's two (2) dogs attacked one of the landlord's employees. The photographs show extreme bruising to the stomach and leg area, which also shows dog bites. I find this seriously jeopardized the health and safety of the landlord's employee.

Further, the landlord requested and in person meeting with the tenant to rectify the problem with the dogs, which was reasonable under the circumstances. The tenant made the personal choice not to participate in the meeting unless the dog owner was present. However, the dog owner is not a tenant and has no rights under the Act.

Based on the above, I find the Notice issued on May 31, 2018, is valid, and remains in full force and effect. Therefore, I dismiss the tenant's application to cancel the Notice. The tenancy will end on the corrected effective date of July 31, 2018, in accordance with the Act.

Since, I have dismissed the tenant's application; I must grant the landlord an order of possession, pursuant to section 55 of the Act.

Section 55(1) of the Act states: Order of possession for the landlord

- 55** (1) If a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, the director must grant an order of possession of the rental unit to the landlord if, at the time scheduled for the hearing,
- (a) the landlord makes an oral request for an order of possession, and
 - (b) the director dismisses the tenant's application or upholds the landlord's notice.

I find that the landlord is entitled to an order of possession effective **July 31, 2018, at 1:00 P.M.** This order must be served on the tenant and may be filed in the Supreme Court. The **tenant is cautioned** that costs of such enforcement are recoverable from the tenant.

I also make the following order for the duration of the tenancy. **I Order that the dogs** subject to this matter be muzzled at all times while they are outside the rental unit. As the May 23, 2018, incident supports that the owner of the dogs does not have proper control over them.

Conclusion

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

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: June 27, 2018

Residential Tenancy Branch