



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC

Introduction

In this dispute, the tenants seek to cancel a One Month Notice to End Tenancy for Cause (the “Notice”) pursuant to section 47 of the *Residential Tenancy Act* (the “Act”).

The tenants filed an application for dispute resolution on July 3, 2020 at the Residential Tenancy Branch Burnaby Office, which held the paper application until July 13, 2020 in compliance with pandemic-related infection prevention protocols.

At the hearing, which was held by teleconference on August 18, 2020, the tenants, the landlords, and the landlords’ son (the “son”) attended. The parties were given a full opportunity to be heard, present affirmed testimony, make submissions, and call witnesses. No issues of service were raised by the parties.

I have only reviewed and considered oral and documentary evidence submitted meeting the requirements of the *Rules of Procedure*, to which I was referred, and which was relevant to determining the issues of this application. Moreover, only relevant testimony is reproduced herein. I have also amended the style of cause on this decision to reflect the correct names of the applicant tenants.

Finally, I note that section 55 of the Act requires that when a tenant applies for dispute resolution seeking to cancel a notice to end tenancy issued by a landlord, I must consider if the landlord is entitled to an order of possession if the application is dismissed and the landlord’s notice to end tenancy complies with the Act.

Issues

1. Are the tenants entitled to an order canceling the Notice?
2. If not, are the landlords entitled to an order of possession of the rental unit?

Background and Evidence

The tenancy began on July 18, 2019 and monthly rent is \$850.00. The tenants paid a security deposit of \$425.00. A copy of the written Residential Tenancy Agreement was submitted into evidence.

On June 28, 2020 the landlords gave notice to end the tenancy for cause by way of RTB form #RTB-33, the Notice. The Notice was served in-person to the tenants. A copy of the Notice was submitted into evidence and on which page 2 indicated three grounds on which the landlords intended to end the tenancy:

1. the tenants significantly interfered with or unreasonably disturbed another occupant or the landlord.
2. the tenants seriously jeopardized the health or safety or lawful right of another occupant or the landlord.
3. breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.

Regarding the first ground, the son testified that the tenant (R.V.) caused significant interference and unreasonable disturbance to the upstairs tenant that the upstairs tenant eventually had to move out. The upstairs tenant had lived in the upstairs part of the property for 4.5 years.

On this ground, the only documentary evidence submitted were third party statements purportedly from the upstairs tenant and a neighbour. As neither third party attended to the hearing to be affirmed and give oral evidence or attended to confirm that the written statements were in fact authored by them, I place little weight on this evidence and will not consider this aspect of the ground further. The landlords had the opportunity to call the former upstairs tenant as a witness, which they did not. The tenant invited me to call the former tenant (which I will not); the tenant also had the opportunity to call the upstairs tenant as a witness for his defense, which he did not.

Regarding the second ground, the son testified that the tenant's dog, described as "a ferocious, rottweiler pit bull dog," seriously jeopardized the landlord's safety by, in an incident occurring on June 19, 2020, "rushing and charging [my father]." The dog cornered the landlord in common area of the property for approximately 30 seconds. The landlord picked up a bat and the tenant picked up a brick and "held it above his head." The son argued that the tenant held the brick in a manner that indicated he might strike the landlord. A photograph of said brick was entered into evidence. Also

submitted into evidence are a couple of videos, one of which depicts the side and backyard common area, which is fenced and gated. The other video depicts the dog barking at the landlord's son, who is videotaping the barking and growling dog. The female tenant calls to the dog, who continues to advance toward the son, who eventually closes the gate.

The son referred to the breach letter, in which the landlords ask that the dog be leashed while in the common area. The landlords want safe access to the common area, which they say cannot be accomplished with an unleashed dog. The landlord is "too afraid to go to the property" because of the dog.

In response, the tenant testified that the landlords "knew all about the dog" and that he gave the landlords a pet damage deposit. He further stated that "the dog is in the yard . . . it has free reign." And, the tenant has "put up BEWARE OF DOG" signs." The dog barking is perfectly normal, the dog is not aggressive, it does not bite, and is "well-adjusted and trained," added the tenant.

Regarding the third ground, the landlords' son (the "son") testified that on May 19, 2020, the landlords discovered the tenants to have a third adult living in the property, along with a dog. The tenancy agreement only permitted the two tenants to reside in the rental unit. The landlords gave the tenants a "breach letter" on May 25, 2020. A copy of the breach letter was tendered in evidence by the landlords.

The letter indicates that the tenants have their daughter living with them. The landlords indicate that they want confirmation that the daughter is a guest, or, if not, that if she is an occupant that the parties draw up a new tenancy agreement. The landlords give the tenants 3, 10, and 14-day deadlines for various options on this matter.

The letter also indicates that, as the tenants acquired a dog (which they did not have at the start of the tenancy), that a new Condition Inspection Report would be required to be completed, and that a pet damage deposit was required. The landlords give the tenants thirty days to deal with this issue.

Finally, the letter references issues with the tenants changing and adding locks and asks the tenants to remove these. The landlords give the tenants three days to take care of this matter.

In response to the third ground, the tenant testified that the landlords altered the tenancy agreement so that the tenants' daughter's name (which apparently appeared

on the original tenancy agreement) was erased. (The landlords denied that they manipulated or altered the agreement.) I note that of all the copies of the agreement submitted into evidence, the only information added to the agreement was the following, which appears below the box where the second tenant's first and middle name would appear:

A handwritten signature in blue ink, appearing to read 'ALSO', with a horizontal line drawn through it.

The son testified that the tenant never responded to or otherwise dealt with the three matters referenced in the breach letter. The tenant closed his submissions by delving into race-related matters that are, as I explained, outside the jurisdiction of the Act.

Analysis

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim.

Where a tenant applies to dispute a One Month Notice to End Tenancy for Cause, the onus is on the landlord to prove, on a balance of probabilities, at least one of the grounds on which the Notice is based.

Ground 1: Tenants significantly interfered with or unreasonably disturbed another occupant or landlord

This ground is section 47(1)(d)(i) of the Act. As this ground was based entirely on evidence pertaining to the tenant allegedly disturbing the upstairs neighbour, and, given that I place no weight on the third party hearsay evidence submitted, I do not find that the landlords have proven this ground on a balance of probabilities.

Similarly, any disturbances or interference that the tenant may have caused another neighbour is outside the jurisdiction of the Act. Disturbances can only occur to other occupants of the same rental property or the landlord. There is, finally, insufficient evidence that the tenant caused the landlord significant interference or an unreasonable disturbance. Certainly, the tenant and the landlord do not appear to get along all that well, and the tenant and the landlord's son have a fractious relationship, but neither rises to the level of meeting a ground based on section 47(1)(d)(i) of the Act.

Ground 2: Tenants seriously jeopardized health or safety or lawful right of another occupant or landlord

This ground is section 47(1)(d)(ii) of the Act. The video submitted into evidence shows a barking dog that slowly moves toward the videotaping landlord's son. However, the dog does not rush the son, nor does it display any canine behavior inconsistent with a "normal" (my words) dog. Having a dog in the backyard is not an uncommon event. The dog apparently chased and cornered the landlord when the landlord was in the common area. However, there is no evidence that the dog actually lunged at or bit or otherwise harmed the landlord.

Thus, it cannot be said, without additional evidence, that the dog at any time actually seriously jeopardized the landlord's health or safety. Certainly, it is an unpleasant experience being barked and growled at by a rottweiler; I have myself had a few experiences with such dogs, and it is anything but enjoyable. However, a barking dog cornering what it perceives to be a stranger is not an unexpected event. Moreover, the landlord ought to have known that the dog might behave in that manner.

Regarding the altercation involving the bat and the brick, it is unclear who did what. The landlord grabbed a bat to defend himself from the dog. The tenant purportedly grabbed a brick and held it above his head, but I cannot draw any inference from this action or conclude that the tenant was necessarily going to assault the landlord. Indeed, it is equally likely that the tenant was protecting his dog. In summary, the sequence of events and the reasons for the parties' behavior remains murky, despite their respective descriptions of what occurred.

When two parties to a dispute provide equally reasonable accounts of events or circumstances related to a dispute, the party making the claim (in this case, the landlord) has the burden to provide sufficient evidence *over and above* their testimony to establish their claim. In this case, I find that the landlords have failed to provide any evidence that the tenant or his dog seriously jeopardized the health and safety of the landlord. For this reason, I must dismiss this ground on which the Notice was issued.

That said, the landlords have a legal right to access the common area without hindrance, and that includes not having a dog charge them. The tenants must make better efforts at controlling the dog when the landlords enter or traverse the common area. Further, while I do not find that the dog ought to be leashed at all times whilst in the common area, it is not unreasonable for the landlords to require that the dog be leashed (or kept inside the rental unit) when the landlords visit the property.

Ground 3: Breach of material term of tenancy agreement not corrected within reasonable time after written notice

This ground is section 47(1)(h) of the Act.

The landlords claim that the tenants kept an additional occupant (and not a guest) in the rental unit, in violation of the tenancy agreement. The tenant claims that the tenancy agreement originally permitted that the daughter could remain there. The scratched-out notation is not, I find, conclusive of anything regarding another occupant being permitted to reside in the rental unit.

While the landlords' breach letter states that "It has come to our attention that your daughter is now living in the residential property.", the landlords produced no further evidence as to whether the daughter currently lives in the rental unit, or for how long she may have lived there when the breach letter was drafted. Indeed, the daughter could be a guest, which is not an occupant and not subject to becoming a party to a tenancy agreement. Without anything further, I cannot find that the tenants had an unauthorized occupant and as such cannot conclude that the tenants breached a material term of the tenancy agreement.

Regarding the requirement that the tenants complete a new Condition Inspection Report, the tenants did not deny that he did not bother completing a new Condition Inspection Report. However, it does not appear that the landlords took any additional steps to complete such a report regardless. Indeed, the landlords have, and had, the legal right to complete a Condition Inspection Report even if the tenants did not want to. The landlords could have simply given notice to enter the rental unit under section 29 of the Act and completed the report with or without the tenants' cooperation.

Based on the landlords' not following through with the requirement themselves, I cannot find that the tenant breached a material term of the tenancy agreement or any section of the Act. Whether any such Condition Inspection Report would be of any benefit this late into the tenancy, however, is an issue for another day.

Taking into consideration all the oral testimony and documentary evidence presented before me, and applying the law to the facts, I find on a balance of probabilities that the landlords have not met the onus of proving any of the grounds on which the Notice was issued. Accordingly, the Notice issued June 28, 2020 is cancelled and of no force or effect. The tenancy shall continue until it is ended in accordance with the Act.

Conclusion

I grant the tenants' application.

I hereby cancel the Notice issued on June 28, 2020. The Notice is of no force or effect and the tenancy shall continue until it is ended in accordance with the Act.

This decision is made on authority delegated to me under section 9.1(1) of the Act.

Dated: August 19, 2020

Residential Tenancy Branch