



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Code CNC, FFT

Introduction

This hearing was convened as a result of the Tenant's Application for Dispute Resolution made on August 31, 2022 and amended on October 31, 2022. The amendment merely removed issues from consideration and named an agent.

The Tenant applies for an order cancelling a One Month Notice to End Tenancy for Cause dated August 29, 2022 (the One Month Notice) and to recover the filing fee, pursuant to the Residential Tenancy Act (the Act).

The Tenant attended the hearing and was accompanied by AK, who did not participate during the hearing. The Landlord attended the hearing on her own behalf. All giving testimony provided a solemn affirmation at the beginning of the hearing.

The Tenant testified that the Notice of Dispute Resolution Proceeding package was served on the Landlord by leaving a copy at the Landlord's office on September 15, 2022. The Landlord acknowledged receipt. The Landlord testified that an evidence package was sent to the Tenant by registered mail on October 17, 2022. The Tenant acknowledged receipt.

No issues were raised with respect to service or receipt of these packages during the hearing. The parties were in attendance or were represented and were prepared to proceed. Therefore, pursuant to section 71 of the Act, I find the above documents were sufficiently served for the purposes of the Act.

The parties were given a full opportunity to present evidence orally and in written and documentary form, and to make submissions to me. I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure, and to which I was referred. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issues to be Decided

1. Is the Tenant entitled to an order cancelling the One Month Notice?
2. Is the Tenant entitled to recover the filing fee?

Background and Evidence

The parties agreed the Tenant moved into the rental unit on December 28, 2021. Rent of \$1,675.00 per month is due on the first day of each month. The parties agreed the Tenant paid a security deposit of \$837.50, which the Landlord holds. A copy of the signed tenancy agreement was submitted into evidence.

The Landlord testified the One Month Notice was served on the Tenant by registered mail on August 29, 2022. The Tenant's acknowledged receipt on August 30, 2022. The One Month Notice is signed and dated, gives the address of the rental unit, states an effective date, states the grounds for ending the tenancy, and is in the approved form.

The One Month Notice was issued on the basis that the Tenant has significantly interfered with or unreasonably disturbed another occupant or the Landlord and has breached a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so. Specifically, the Landlord testified there have been a number of complaints about the Tenant's three dogs since the Tenant moved in. The Landlord referred to a chronology which was submitted into evidence. It describes written and verbal complaints from the tenants in #12 and #15.

The complaints from the tenant in #15 were in writing. In an email dated April 29, 2022, she complains of “barking non stop.” In an email dated July 9, 2022, she advises that “this dog of [the Tenant’s] won’t stop barking when [the Tenant] leaves...which sets my dogs off”. In an email to the Landlord dated August 18, 2022, she describes an incident when the Tenant’s dogs barked “from 12:30 – 3am” and that the Tenant’s dogs antagonize her dogs.

Further, the Landlord testified that in an email dated September 10, 2022, the tenant in #15 gave her notice to end the tenancy because of the disruption caused by the Tenant’s dogs. It states: “I’ve been thinking about it for a few months now & considering the issues with this woman...& the continual barking of her dogs I have come to the conclusion to move out of my suite.” Copies of the above email communication were submitted into evidence.

The Landlord also testified that the Tenant in #12 has witnessed the Tenant’s dogs walking around off-leash outside the rental property. Photographs of the Tenants dogs walking off-leash were submitted into evidence. The complaints from the tenant in #12 appear to have been made to the Landlord in person.

In summary, the Landlord testified that the Tenant’s dogs have been disturbing other tenants since the tenancy began and has failed to correct the issue despite being given warnings.

In reply, the Tenant testified that she lives with multiple disabilities that impact her mobility. She testified that she has three French bulldogs that are her service and companion animals.

The Tenant testified that soon after she moved in, her dogs were repeatedly menaced by larger dogs belonging to the tenants in #12 and #15. The Tenant testified that she made a complaint to animal control authorities on January 15, 2022. A copy of the complaint was submitted into evidence. The Tenant submits that the complaints from the tenants in #12 and #15 (who are friends) was in retaliation for the complaint she made to animal control authorities.

The Tenant also asserted that the Landlord issued the One Month Notice based on complaints from the tenants in #12 and #15 but has not investigated them to determine their veracity.

The Tenant also referred to excerpts of emails (not complete emails) to the Landlord dated February 4 and 23, 2022. In the emails, the Tenant states she is a dog trainer and can help the Landlord to identify aggressive dogs and identified the dogs in #12 and #15 as “vicious and aggressive” towards her dogs. In another email to the Landlord on February 23, 2022, the Tenant requests a fenced area to protect the Tenant’s (and other tenants) dogs from “the vicious dogs living on my floor.”

The Tenant also referred to an email to the Landlord dated July 12, 2022, in which she denies that her dogs bark or cause a nuisance and refers to video evidence of the dog barking in #15.

In a further email to the Landlord dated July 13, 2022, the Tenant again refers to the dogs in #12 and #15, refers to video evidence, and question why the Landlord did not appear to be treating all tenants fairly.

The Tenant also referred to video evidence. The video submitted by the Tenant is a compilation of 12 vignettes dated from March 17 to October 11, 2022, which show the Tenant’s dogs walking calmly in and around the rental property. While other dogs in the rental unit can be seen and heard barking, the Tenant’s dogs remain calm and uninterested.

The Tenant also referred to letters of support from other tenants in the rental property. In a letter dated June 16, 2022, KM states suggests that many dogs bark in the building and that the Tenant is unfairly being singled out. In a letter dated October 5, 2022, DG states: “I have never heard those dogs or witnessed any type of nuisance behaviour from them.” An undated letter from DV states: “We are home most days and have never heard these dogs bark when we are in our apartment.”

In response to the Landlord’s evidence of complaints from the tenant in #15, the Tenant noted that tenant appears to have been motivated by a rent reduction or other compensation, not by being disturbed. The Tenant also noted the Landlord did not provide evidence of complaints from any tenants other than those in #12 and #15.

Analysis

Based on the documentary evidence and oral testimony provided during the hearing, and on a balance of probabilities, I find:

Section 47(1)(d) and (h) of the Act permit a landlord to take steps to end a tenancy for the reasons stated in the One Month Notice. The Landlord bears the burden of providing evidence in support of ending the tenancy.

In this case, and for the following reasons, I find there is insufficient evidence before me to uphold the One Month Notice. First, the Landlord's evidence is based primarily on the written complaints from the tenant in #15. However, the tenant in #15 was not called upon to provide oral testimony or have her evidence tested on cross examination. As a result, I give this evidence little weight. Similarly, I was not referred to any written complaints from the tenant in #12 and this tenant did not attend the hearing to provide oral testimony. As the evidence of complaints from the tenant in #12 was provided only through the Landlord, I give this evidence little weight.

Second, I find it is more likely than not that the written complaints from the tenant in #15 were in retaliation for the Tenant reporting their dog to animal control authorities.

Third, the Tenant provided a number of videos showing her dogs walking calmly around the rental property. Even when walking past another dog barking in the rental property, the Tenant's dogs remained calm and did not respond. I find it is more likely than not that the video clips are indicative of the general behaviour and demeanour of the Tenant's dogs. That is not to say they do not bark but that they are generally calm.

Fourth, the Tenant's testimony was supported by three letters of support from other tenants in the rental property who indicated they do not hear the Tenant's dogs bark or do not bark any more than other dogs in the rental property.

Considering the above, I find there is insufficient evidence before me to uphold the One Month Notice. Therefore, I order that the One Month Notice is cancelled and is of no force or effect. The tenancy will continue until otherwise ended in accordance with the Act.

As the Tenant has been successful, I find the Tenant is entitled to recover the filing fee. I order that the Tenant may retain \$100.00 from a future rent payment at the Tenant's discretion.

Conclusion

I order that the One Month Notice is cancelled and is of no force or effect. The tenancy will continue until otherwise ended in accordance with the Act.

I order that the Tenant may retain \$100.00 from a future rent payment at the Tenant's discretion.

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: November 16, 2022

Residential Tenancy Branch