



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC

Introduction

This matter dealt with an application by the tenant to cancel a Notice to End Tenancy for cause.

Service of the hearing documents was done in accordance with section 89 of the *Act*, and was hand delivered to the landlord on June 13, 2011. The landlord was deemed to be served the hearing documents on this date.

Both parties appeared, gave affirmed testimony, were provided the opportunity to present their evidence orally, in written form, documentary form, to cross-examine the other party, and make submissions to me. On the basis of the solemnly affirmed evidence presented at the hearing I have determined:

Preliminary Issues

The landlord argues as she only received the Notice of this hearing on June 13, 2011 and therefore she did not have five days before the hearing to prepare her evidence. The *Residential Tenancy Act (Act)* allows an applicant three days to serve the respondent after filing their application. The tenant filed her application on June 10, 2011 and served the landlord on June 13, 2011. The Rules of Procedure state that in normal circumstances evidence must be received five days before a hearing however rule 4.1 (b) states if the date of the dispute resolution proceeding does not allow the five day requirement to be met then all the respondents evidence must be received by the Residential Tenancy Branch and served on the applicant at least two days before the dispute resolution proceeding. The landlord testifies

that she did not have time to send in her evidence because she would not have met the five day rule so her evidence was faxed to this office on June 19, 2011 and not received by the dispute resolution officer until after the hearing had concluded. Therefore the landlords' evidence has not been considered in this decision.

Issue(s) to be Decided

Is the tenant entitled to have the One Month Notice to End Tenancy cancelled?

Background and Evidence

Both parties agree that this tenancy started on February 01, 2011. The tenant states she pays a monthly rent of \$778.00. This is a fixed term tenancy which is due to expire on January 31, 2012.

The landlords' agent testifies that she served the tenant with a One Month Notice to End tenancy on May 24, 2011. This Notice is dated May 24, 2011. The tenant disputes this and states she was not served the Notice until after she had paid her rent for June. The tenant states the Notice was posted on her door on May 31, 2011.

The Notice gives two reasons to end the tenancy as follows:

The tenant or a person permitted on the residential property by the tenant has

- i) significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property,
- (ii) seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant,

The landlords' agent testifies that they received a phone call from another tenant in the complex to inform them that two small children were playing in the children's play area and they had an unleashed Pit Bull dog with them. The landlords' agent states she went out to speak to the children and warned them they cannot be out with the dog and told them to go home to their mother. The landlords' agent states another tenant was walking his dogs

when the Pit Bull dog attacked the other dogs. The other tenants' dog was injured and was taken to the vets.

The landlord testifies that their agreement states all dogs must be kept on a lease while in the complex. This dog was clearly not on its lease. She states the tenant was not around at the time and the Pit Bull dog belonged to her friend who was staying in her unit. The landlord states the tenant was then served with the One Month Notice to End Tenancy for cause. The landlord requests that the One Month Notice be upheld and seeks an Order of Possession.

The tenant does not dispute that this incident happened. She states she was taken into police custody for questioning and she had to call her friend to come to stay at her house to look after her small child. She states she asked her friend not to bring her dog because she knew she was not allowed to have dogs at her unit and had not paid a pet deposit. She states she called her friend while in custody and reminded her to take her dog elsewhere. She states her friend told her she would do this but she never got round to it before the incident occurred.

The tenant testifies that her friend has spoken to the other tenant and has taken full responsibility for the incident and will pay any vet bills for the other dogs' treatment. The tenant testifies that at this time the other tenant has only presented an estimate of the bills and they are waiting to get the final bill before she settles this matter.

The tenant states she had spoken to the landlord and they had told her to figure it out with the other tenant and if she dealt with it then she would not be evicted. The tenant states however the landlord still served her with an eviction notice. The tenant states the other tenant has agreed that he will give the final bill to her friend and her friend will pay it then. She states this was an unfortunate incident as all Pit Bull dogs should be leashed and muzzled and it was poor judgement on her friends part to allow the children to take the dog

out. The tenant states this type of incident will never happen again as the dog will never be allowed back to her unit.

Analysis

I have carefully considered all the evidence before me, including the sworn testimony of both parties. With regard to the date the One Month Notice was served; when one parties testimony is contradicted by the testimony of the other party then the party making the claim would have to provide additional corroborating evidence to meet the burden of proof. In this matter the landlords agents' both testify that the Notice was served on May 24, 2011 and the tenant has testified that it was not served until the day after she paid her rent on May 31, 2011 As the Notice was served by the landlord the landlord must meet the burden of proof regarding service. I have no corroborating evidence from the landlord to support this claim therefore I find the landlord has not met the burden of proof in this matter and I have deemed that the tenant was served on May 31, 2011.

With regard to the reasons given on the Notice to End Tenancy; the tenant does not dispute that this incident occurred and is aware that she is responsible under the *Act* for the actions or neglect of her guests. However, although this was an unfortunate incident which resulted in a dog getting hurt; the tenants' friend has agreed with the other dog owner to settle any vet bills incurred for his dogs treatment. While the tenant has the ultimate responsibility for her guests I find this incident was entirely out of the tenants hands and is unlikely to reoccur. Consequently, it is my decision that the tenants' application will be upheld and the One Month will be set aside.

I caution the tenant however that any further incidents of this nature will be dealt with in accordance to the *Act* and the landlord is at liberty to serve another One Month Notice to the tenant for any other failures to comply with the *Act*. I further caution the tenant to ensure her friend fulfills her responsibility to pay the other tenants vet bill and settle this matter accordingly.

Conclusion

The tenant's application is allowed. The one Month Notice to End Tenancy for Cause dated May 24, 2011 is cancelled and the tenancy will continue.

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 21, 2011.

Residential Tenancy Branch