



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding EMV Holdings Corp
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC, MNDC, OLC, LRE, LAT, FF

Introduction

The tenants have applied for dispute resolution, seeking an order cancelling a one month Notice to End Tenancy.

There are other issues the tenants wish to have resolved at this hearing, but the tenants confirmed that the cancellation of the notice was the most important issue they wanted dealt with. I determined that the other components in their claim are not related in law or fact to the issue of the ending of the tenancy, and the disputed notice. One of the objectives of the Rules of Procedure for hearings of this nature is to ensure a consistent, efficient and just process for resolving disputes (Rule 1.3). It is not possible within this context to deal with a wide array of issues of concern to the tenants in one short hearing. Accordingly, those issues that are not related in fact and law to their key claim regarding the notice of the end of this tenancy, are not dealt with in this decision, and are all dismissed pursuant to Rule 2.3, with liberty to re-apply.

Issues to Be Decided

Is the Notice to End Tenancy (the “Notice”) served upon the tenants effective to end this tenancy, or should the Notice be cancelled and the tenancy continue?

Background and Evidence

This tenancy began March 1, 2003. Rent is due on the 1st day of each month in the amount of \$1,610.00 and is fully paid as at the time of this hearing.

A one month Notice to End Tenancy was served upon the tenants April 9, 2013, given on the basis that the tenants have failed to comply with a material term of the tenancy, and have not corrected the situation within a reasonable time after the landlord has given written notice to do so. This notice ends the tenancy effective May 31, 2013.

Affirmed testimony and affidavit evidence was provided that a worker of the landlord was bitten by the tenants’ dog on 2 occasions while working in the subject premises. The first occasion was on October 16, 2012, and the second on April 4, 2013.

The female tenant denies being present during the 1st allegation, and contends she was at work. The landlord provided evidence that in fact the female tenant was not at work on the subject day.

The landlord provided into evidence a copy of a written notice allegedly given to the tenants following the first incident. The letter stated that if a further occurrence of a dog bite occurred, the tenants may be asked to leave. The landlord also provided a statement from a witness that he saw the landlord delivery a copy of this letter to the tenants' unit.

The tenants deny receiving any warning regarding the first incident, and both deny that they were even present at the premises at the time. The tenants further contend the landlord's file regarding their tenancy does not contain any such warning letter. Essentially they submit that the incident is fabricated, and the warning letter was prepared after the fact, and never provided to them at the relevant time.

The landlord contends the first incident did in fact occur, and the tenants are being deceitful in not admitting it, or in admitting the receipt of the first warning.

The 2nd allegation of a dog bite occurred April 4, 2013. While details surrounding this incident are not completely agreed to by the parties, the tenants do not dispute that the worker was bitten this occasion.

Analysis

Section 47(1)(h) permits a landlord to end a tenancy when a tenant has failed to comply with a material term, and has not corrected the situation within a reasonable time after the landlord gives written notice to do so.

While some of the peripheral details surrounding these incidents are in dispute, I accept as fact these two incidents of the worker being bitten by the dog occurred. While it may be as alleged by the female tenant, that the dog was simply acting in a manner to protect its' owner, the facts do not indicate there was any provocation by the worker or that the female tenant was placed at physical risk in any way, prior to the worker being bitten.

In arriving at this decision, I have preferred the landlord's evidence over some of the evidence of the tenants. A main reason for doing so, is that the female tenant alleged she was at work during the first incident, while the landlord's evidence makes it clear that was not the case. I find no corresponding indication of unsupportable evidence of the landlord, and have no reason to doubt that the landlord's worker was in fact bitten twice, and not just once.

The critical issue that follows is whether the bites constitute a failure to comply with a material term of the tenancy, and whether the landlord gave a written notice to correct the situation. In this respect I agree with the landlord that the safety of postal workers, repairers, staff and other occupants is of paramount importance, and that safety includes the freedom from being bitten by a dog. The interference of that safety issue by the tenants' pet contravenes this material term of the tenancy agreement.

Given that there is a statement of a witness to the given of a warning letter to the tenants after the first incident, and given that I find the landlord credible, I accept that the warning letter was in fact written and provided to the tenants immediately following the first incident. When the second incident occurred, grounds existed to warrant an ending of this tenancy.

I find the one month notice is therefore valid, and effective to end this tenancy as of May 31, 2013. The tenants claim is dismissed.

Conclusion

The tenants' application to cancel the notice is dismissed. The notice is effective to end this tenancy. The tenant's application to recover their filing fee is similarly 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: May 10, 2013

Residential Tenancy Branch

