

Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards
Ministry of Housing and Social Development

DECISION AND REASONS

Dispute Codes:

MT, CNC

Introduction

This hearing dealt with an application by the tenant pursuant to the *Residential Tenancy Act* for an order to set aside the notice to end tenancy for cause. The tenant also applied for more time to make this application.

Both parties attended the hearing and were given full opportunity to present evidence and make submissions.

The tenant stated that the thirty day notice to end tenancy was served on him, in person on June 26, 2009. The tenant applied to dispute the notice on July 02, 2009. Since the tenant applied to dispute the notice within the ten day time frame, his application for more time to dispute the notice is moot.

This hearing only dealt with the tenant's application to cancel the notice to end tenancy.

Issues to be decided

Does the landlord have reason to end the tenancy or should the notice to end tenancy be set aside and the tenancy be allowed to continue?

Background and Evidence

On April 01, 2008 the tenant entered into a tenancy agreement that contained a clause that states "*Unless specifically permitted in writing in advance by the landlord, the tenant must not keep or allow on the residential property any pet*". In addition there is a handwritten term of the tenancy agreement under "other". This term states "*A no pet policy for tenants*"

The tenant testified that he was given verbal permission to keep a pet dog by the manager who was employed at that time. A written statement from a friend and the

tenant's room mate confirm that the previous manager allowed the tenant to keep the dog on a temporary basis, as the dog's owner (tenant's brother) was terminally ill.

During the hearing the tenant testified that he owned the dog for the last ten years which contradicted his evidence of the dog belonging to his terminally ill brother. The tenant also stated that the previous manager offered to allow the tenant to keep the dog on site, if he paid \$250.00 as a pet deposit, but later changed her mind.

The tenant stated that since he was given verbal permission to keep the dog and has done so for the last year, he is not in breach of the tenancy agreement.

The landlord filed a note written by the previous manager regarding the circumstances under which she allowed the tenant to keep the dog. The note states that shortly after the tenant moved in, the manager noticed the presence of the dog and warned the tenant about the possibility of eviction if he kept the dog. However, when the tenant told her about the dog's owner being terminally ill, she permitted him to keep the dog till the owner passed away.

When the new manager noticed the dog, she informed the tenant that he would have to remove the dog. She corresponded with the previous manager regarding the terms of the verbal approval given to the tenant and was also informed by the tenant that his brother had passed away.

On June 12, 2009, she gave the tenant written notice to remove the dog from the rental unit and on June 26, 2009, she served him with a notice to end tenancy for failure to do so, thereby breaching a material term of the tenancy agreement. During the hearing, the landlord offered to allow the tenancy to continue if the dog was removed from the rental unit.

Analysis

Based on the sworn testimony and the evidence filed by both parties I find that the tenant was aware of the no pet policy and obtained permission, on compassionate grounds to keep the pet for a limited period of time. I also find that the tenant is the true owner of the pet and has owned the pet for the last ten years. Therefore, the tenant entered into the tenancy agreement with full knowledge of the no pet policy.

Accordingly, I find that the tenant breached the terms of the tenancy agreement despite written notice to remove the dog from the rental unit. Therefore, the notice to end tenancy is upheld and the tenant's application to cancel the notice is dismissed.

During the hearing the landlord made a request under section 55 of the legislation for an order of possession. The landlord agreed to give the tenant additional time to find a rental unit that would allow pets. Under the provisions of section 55(1), upon the request of a landlord, I must issue an order of possession when I have upheld a notice to end tenancy. Accordingly, I so order. The tenant must be served with the order of possession. Should the tenant fail to comply with the order, the order may be filed in the Supreme Court of British Columbia and enforced as an order of that Court.

Conclusion

The notice to end tenancy is upheld and I grant the landlord an order of possession effective on or before **1:00 p.m. on October 31, 2009.**

Dated August 13, 2009.

Dispute Resolution Officer