



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Atira Property Management
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes

CNC

Introduction

This hearing dealt with an application by the tenant to cancel a notice to end tenancy for cause. The tenant and an agent for the landlord participated in the teleconference hearing. The landlord requested an Order of Possession if I were to uphold the landlord's Notice to End.

The tenant did not submit any documentary evidence aside from the Notice to End. The landlord stated that they served *all of their evidence* on the tenant, which the tenant acknowledged receiving other than one page of the landlord's evidence consisting of a series of incidents spanning January to April 2013. I found that the tenant was deemed served with at least all of the landlord's relevant evidence.

I have reviewed all evidence before me, however, only the evidence relevant to the issues and findings in this matter are described in this decision.

Issue(s) to be Decided

Is the notice to end tenancy valid?

The onus is on the landlord to prove they issued a valid Notice to End.

Background and Evidence

On or about April 22, 2013 the tenant received the landlord notice to end tenancy for cause dated April 19, 2013. The notice indicates that the reasons for ending the tenancy are as follows: (1) the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord; (2) the tenant has seriously jeopardized the health or safety or lawful right of another occupant or the landlord, and (3) the landlord wrote at the top of the notice to end: *Breach of signed contract regarding pet ownership in the building, and verbal warnings ignored and video coverage proves disregard toward agreement.*

Landlord's Evidence

The landlord stated that since the outset of the tenancy in August 31, 2012, the tenant has rarely complied with the stipulation / term of the tenancy agreement respecting the control of their dog (a husky). The parties agreed that their tenancy agreement carried a hand-printed "Special Note" stating: "Pet is to be kept on leash and muzzle at all times when in common areas of the building – hallways, lobby, kitchen, elevator, washrooms, lobby laundry" – *signed by both parties*. The landlord testified that this term in the agreement was included for no other reason than to avoid problems within the property, and due diligence on the landlord's part in respect to the other residents of the property, following a previous incident unrelated to the tenant. The landlord testified the tenant's dog has never been the subject of an injurious incident. The landlord testified they received numerous logged notes from staff of the residential property that the tenant was not abiding by the tenancy agreement respecting their dog. The landlord provided that the dog was seen on many occasions about the hallways, or roaming the hallways unattended, and without a muzzle.

In particular the tenant acknowledges receiving a letter on October 22, 2012 highlighting to the tenant that were in breach of their agreement and that the letter followed repeated verbal reminders that they were not abiding by the terms for keeping a dog on the residential property. The letter stipulated it was a warning, which if ignored would jeopardize their tenancy.

On March 11, 2013 the tenant received another letter from the landlord repeating the concerns of the previous letter, and stating that, from soon after the previous letter, the tenant had been witnessed by staff of the property and on surveillance video in breach of the tenancy agreement – not leashing or muzzling their dog while in the common residential property. Again, the letter stated that further non-compliance would result in eviction. The landlord re-iterated their intent to avoid potential incidents.

Tenant's Response

The tenant acknowledged they fully understood the term of their agreement respecting dog ownership when they signed the agreement and initialled the *Special Note* respecting control of their dog. The tenant claims their dog is not dangerous and does not like being leashed or muzzled, even for short periods, and that the use of a muzzle is unfair to the dog and it is not required. The tenant was forthright that the landlord's wishes are not reasonable given his knowledge of his dog. The tenant repeated that their dog is not a problem and disagreed with having to control their dog to the letter of the tenancy agreement, and acknowledged they should not be having this dispute unless there had first been a problem *incident* respecting the dog.

Analysis

I find the tenant's responses to the landlord's attempts to place parameters on the tenant's pet ownership clearly indicate their opposition to them. It is not clear from the

evidence if the tenant's non-compliance with the tenancy agreement has significantly negatively compromised an occupant or the landlord. However, I find that the notice to end tenancy is valid on several bases. I find that even if the landlord's notice to end was not marked as: *breaching a material term of the tenancy agreement*, I find that the tenant knew or should have known the information which was omitted on the Notice; especially since the landlord wrote on the Notice the tenant was in breach of their contract regarding pet ownership. I find that on the face of the evidence the tenant has repeatedly breached a material term of the agreement and has presented clear and credible testimony that they have disregard for the material term to which they originally agreed. In addition, I find that the tenant's non-compliance with the tenancy agreement respecting their dog could seriously jeopardize the safety of another occupant or the landlord. As a result *of all the above*, the landlord orally requested an Order of Possession and I accordingly must grant an Order of Possession. Effectively, the tenant's application to cancel the landlord's Notice to End dated April 19, 2013 **is dismissed**, without leave to reapply.

Conclusion

The tenant's application **is dismissed**.

I grant the landlord an Order of Possession **effective May 31, 2013**. 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.

This Decision is final and binding on both parties.

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 28, 2013

Residential Tenancy Branch