



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter
DECISION

Dispute Codes CNC

Introduction

This hearing dealt with an application by the tenant for an order setting aside a 1 Month Notice to End Tenancy for Cause. Both parties appeared and had an opportunity to be heard.

At the beginning of the hearing the tenant stated she had filed some evidence at the Residential Tenancy Branch on Monday, September 9. That evidence was not on the file. The landlord acknowledged receipt of the evidence and described it as a written statement from the tenant and some letters of support. Because of the possibility that the tenant's evidence had been misfiled by the Residential Tenancy Branch clerical staff I asked the tenant to resubmit her written evidence and I undertook not to render a decision until I had reviewed her evidence. The tenant did resubmit her evidence as promised. In the meantime, her original submission was forwarded to me.

Issue(s) to be Decided

Has the tenant breached the *Residential Tenancy Act*, regulation or tenancy agreement so as to result in the end of this tenancy?

Background and Evidence

This month-to-month tenancy commenced August 11, 2011. The rental unit is subsidized housing. The tenant lives there with her teenage daughter.

There is a written tenancy agreement. The relevant portions of the agreement are clause 18 which states:

“A pet. . . can only be kept in the rental unit if:

- I. the tenant receives written permission from the Landlord in advance of the pet inhabiting the rental unit and
- II. the tenant agrees to abide by the terms of the Pet Rules, Schedule B by completing the Pet Agreement in advance of the pet inhabiting the rental unit, and
- III. the tenant pays the Pet Damage Deposit by a money order as per section 18a of this agreement.”

And Schedule B which states:

“b. Dogs are not allowed. Visitors are not allowed to bring their dogs onto the property.

8. Tenants cannot pet sit or board pets in their rental unit or on the Residential Property. Visitors are not allowed to bring their dogs on to the property.

11. The pet rules are material to this tenancy. Tenants who do not comply with any or all of the Pet Rules will be in breach of the Tenancy Agreement and subject to termination of this tenancy.”

The landlord testified that they have a strict “no dog” policy on all of their properties. Cats are allowed on this property.

This spring the presence of a dog at the tenant's unit was reported to the landlord. The landlord issued and served a warning letter on the tenant. The warning letter contained a quote from the wrong tenancy agreement as it stated that cats and dogs were not allowed on the property. The letter also advised that there would be a follow-up inspection on June 3. The inspection was conducted on that date and there was no sign of a dog.

On July 8 there was once again a report of a dog at the tenant's unit. A second warning letter was issued and served on the tenant. Once again the letter contained a quote from a tenancy agreement that said that dogs and cats were not allowed on this property. The tenant was given until July 15 to have the dog off the property. When the staff delivered the letter the dog was at the unit. It was also at the unit when the staff did a follow-up inspection on July 16. At some point during these inspections the tenant told the landlord's staff she was looking after the dog for someone else, how important the dog was to her, and that she was not going to give up looking after the dog.

On July 25 the landlord issued and posted a 1 Month Notice to End Tenancy for Cause for breach of a material term. The tenant filed this application for dispute resolution on August 7.

The dog in question is a 14 month old Papillon named Daisy. Daisy belongs to the tenant's mother. From the tenant's evidence it appears that both she and her mother have significant health and other problems. After her mother got Daisy she ended up living in a shelter for a while. The shelter did not allow dogs so the tenant and her father looked after Daisy for the tenant's mother. Her father kept the dog at night; the tenant

kept the dog while her father was at work. The tenant's mother has now found housing about four blocks from this location where the dog is allowed.

The tenant described how close she, her mother and her daughter are and how they rely on each other for support. The tenant says her mother always has Daisy with her, even when she comes to visit the tenant. In fact, although her mother was supposed to participate in the hearing, she did not because she had Daisy with her and did not want to come to the tenant's unit with the dog. In her written material described the benefit Daisy has been to her mother. The tenant also described how attached all three women are to Daisy.

The tenant's written and oral evidence also included the following:

- Daisy is very small. In fact, she is smaller than many of the cats in this complex.
- Daisy is very well-behaved.
- Daisy has a physical problem that makes barking almost impossible for her.
- The neighbours like Daisy.
- The tenant lives in an end unit town house with a large yard space.
- The tenant has bought a fencing system to contain Daisy when she is outside.

The tenant acknowledged that the landlord's employees spoke to her twice about the dog. She also acknowledged receipt of the warning letters.

Analysis

Section 47(1)(h) of the *Residential Tenancy Act* allows a landlord to end a tenancy where a tenant has failed to comply with a material term of the tenancy agreement and has not corrected the situation within a reasonable period of time after the landlord gives written notice of the breach.

The tenancy agreement is very clear that no dogs are allowed on the property – even to visit. It does not matter whether the dog is large or small; well behaved or not; popular with the neighbours or not; hypoallergenic or not. It does not matter whether the unit is well set up for a dog or not or whether the tenant has made provisions to keep the dog contained when it is outside. Even the emotional or health benefits a particular dog may have provided this family may not be considered.

The tenant gave a lot of information in her written evidence and oral testimony. What she did not convey was an understanding of the absolute nature of this provision of the tenancy agreement or her willingness to comply with this provision; either in the past or in the future.

I find that the “no dogs” clause was a material term of this tenancy agreement. Based upon the evidence I must find that the tenant did fail to comply with a material term of a tenancy agreement and did not correct the situation within a reasonable time after the landlord had given her written notice of the breach. Accordingly, the tenant’s application is denied.

Conclusion

The tenant’s application is denied.

Section 55(1) of the *Residential Tenancy Act* provides that if a tenant makes an application to set aside a landlord’s notice to end a tenancy and the application is dismissed, the dispute resolution officer must grant an order of possession of the rental unit to the landlord if, at the time scheduled for the hearing, the landlord makes an oral request for an order of possession.

The landlord did make an oral request for an order of possession. The landlord indicated that it was agreeable to the order of possession being made effective as of September 30. Accordingly, an order of possession effective **1:00 pm, September 30** is granted to the landlord. This decision and the order of possession must be served on the tenant. If necessary, this order may be filed in the Supreme Court and enforced as an order of that Court.

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: September 17, 2013

Residential Tenancy Branch

