



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding 376260 B.C. Ltd.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC, FF

Introduction

This was the hearing of the tenant's application to cancel a one month Notice to End Tenancy for cause. The tenant attended and the landlord's representative called in and participated in the hearing. An intended witness for the tenant also called in at the commencement of the hearing, but it was not necessary to hear from her.

Issue(s) to be Decided

Should the Notice to End Tenancy dated September 17, 2013 be cancelled, or is the landlord entitled to an order for possession pursuant to the request made at the hearing?

Background and Evidence

The rental unit is an apartment in Vancouver. The tenant has lived in the rental unit since 2006. Originally he shared the rental unit with a co-tenant, but in December, 2009 he became the sole tenant. The tenancy agreement provides by clause 13 that:

The tenant agrees that there are to be no pets kept inside or outside the premises.

The provision is repeated at clause 19 (d) of the tenancy agreement and the tenant acknowledged the provision by initialling the tenancy agreement.

The landlord's representative testified that the landlord has a no pets policy for the building. He testified that on August 21, 2013 he encountered the tenant's roommate bringing a dog into the building and discovered that the tenant was keeping a dog as a pet in the rental unit. The landlord's representative spoke to the tenant at the rental unit on August 31st and reiterated the no pets policy. According to the landlord, the tenant said that he had no intention of removing the dog from his rental unit. On September 17, 2013 the landlord served the tenant with a one month Notice to End Tenancy and with an accompanying letter. The Notice to End Tenancy alleged that the tenant had breached a material term of the tenancy and claimed that he had seriously jeopardized the health or safety or lawful right of another occupant or the landlord and had put the

landlord's property at significant risk. In the letter the landlord said that it had not given the tenant a warning letter before serving the Notice to End Tenancy because the tenant had clearly stated his intention to keep the dog. The landlord's representative said that he first became aware that the tenant had a dog after the August 21st encounter. He testified that he has participated in annual fire safety inspections throughout the tenancy and the tenant's dog was never present during those inspections; he was unaware that the tenant had a dog before August 21st.

The landlord's representative testified all tenancy agreements for the 25 suites in the rental property contain a no pets clause. He that the landlord has taken steps to have tenants comply with the agreement when it has learned of a breach of the no pets clause. He referred to an occupant who had a dog as a pet and who lived two doors down from the tenant. The landlord warned the occupant that if they did not remove the dog from their rental premises they would be evicted. The occupant chose to leave voluntarily in July of 2012. The landlord is aware of another occupant who has a cat. The landlord's representative testified that the landlord intends to replace carpets in all common areas of the building and will do so after it is satisfied that there are no pets in the building. On September 17, 2013 the landlord distributed a notice to all residents regarding the no pet policy, putting them on notice that the no pets provision would be strictly enforced and any tenant with a pet who chose to keep that pet would have to move from the rental property.

The tenant testified that he has been a resident of the rental property for more than eight years and he has owned his dog for over three years. The tenant said that when he got his dog there were other residents in the building who had cats and dogs. The tenant said that there have never been complaints from other tenants about his dog and there has never been a concern that his dog has caused any damage to his apartment or the rental property. The tenant said that during the period he has had his dog, persons hired by the landlord have entered his apartment to perform repairs and have seen his dog in the rental unit. No one who has attended to perform repairs has said anything about the dog. The tenant submitted letters from two occupants of the rental property, one of whom was the former co-tenant of the rental unit. They each wrote to support the tenant and to support the tenant's wish to keep his dog. They said that the tenant's dog has never disturbed other occupants.

Analysis and conclusion

The tenant expressly agreed to the "no pets" clause in the tenancy agreement when the tenancy commenced in 2006. The tenant acknowledged at the hearing that he did not seek prior approval from the landlord before he obtained his dog some three years ago. I accept the testimony of the landlord's representative that the landlord was unaware that the tenant had a dog until it was discovered in August. I find that the landlord did not approve the tenant's acquisition of a pet and it did not waive the no pets provision in the tenancy agreement. The landlord's representative testified that the landlord has acted to enforce the prohibition whenever it has become aware of a breach and other

occupants have either complied or moved. I find that the no pets clause is a material term of the tenancy agreement and the tenant is in breach of that provision. Because the tenant made it plain that he had no intention of complying with the term, I find that the landlord was free to issue the Notice to End Tenancy when it did without affording the tenant more time to rectify the breach.

Based upon my findings set out above, I dismiss the tenant's application to cancel the Notice to End Tenancy dated September 17, 2013.

Section 55 of the *Residential Tenancy Act* provides as follows:

- 55** (1) If a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, the director must grant an order of possession of the rental unit to the landlord if, at the time scheduled for the hearing,
- (a) the landlord makes an oral request for an order of possession, and
 - (b) the director dismisses the tenant's application or upholds the landlord's notice.

I have dismissed the tenant's application to dispute the landlord's Notice to End Tenancy. The landlord made an oral request for an order of possession at the hearing. Pursuant to section 55 which affords me some discretion to fix the date of an order for possession I grant the landlord an order for possession effective November 30, 2013 after service upon the tenant. This will allow the tenant some time to locate other accommodation. This order may be registered 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: October 31, 2013

Residential Tenancy Branch

