



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding Prince George Metis Housing Society  
and [tenant name suppressed to protect privacy]

## **DECISION**

### **Dispute Codes:**

CNC; FF

### **Introduction**

This matter was originally heard on December 12, 2013, and dealt with an application to cancel a *One Month Notice to End Tenancy for Cause* issued October 22, 2013 (the "Notice"); and to recover the cost of the filing fee from the Landlord. The matter was adjourned by consent. An Interim Decision was provided on December 17, 2013, which should be read in conjunction with this Decision.

The parties gave affirmed testimony at the Hearing.

### **Issue to be Determined**

- Should the Notice be upheld or cancelled?

### **Background and Evidence**

A copy of the tenancy agreement was provided in evidence. This tenancy began on June 18, 2012.

The rental unit is subsidized, with the Tenants paying a proportion of their income for rent.

The Landlord's agent served the Tenants with the Notice on October 22, 2013, by delivering the Notice to the Tenants at the rental unit.

The Notice provides the following reason for ending the tenancy:

Breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.

### **The Landlord's agents gave the following testimony:**

- Clause 21 of the tenancy agreement prohibits pets without prior written consent of the Landlord. Clause 42 of the tenancy agreement makes an exception for fish and birds, under certain conditions.
- The Landlord's agents stated that on September 11, 2013, they discovered that the Tenants had a dog contrary to the tenancy agreement.

- The Landlord's agent had discussions with the Tenants about the dog. She stated that the male Tenant advised that he needed a service dog to help him with his post traumatic stress disorder symptoms. He told the Landlord's agent that he would provide documentation in this respect.
- The male Tenant provided a note from his nurse practitioner, dated September 23, 2013. A copy of the note was provided in evidence.
- The Landlord did not accept the nurse practitioner's note as proof that the Tenants' dog was a service dog. The Landlord's agent advised the Tenant that he had to provide documentation with respect to certification of his dog by October 18, 2013. On September 26, 2013, the Landlord provided the Tenants with a warning letter, a copy of which was provided in evidence.
- The Landlord's agent stated that the Tenants' dog is still living in the rental unit. She submitted that the Tenants have breached a material term of the tenancy agreement and that they have had more than enough time to correct the breach.
- The Landlord's agents asked for an Order of Possession, effective 1:00 p.m., February 28, 2014.

The male Tenant gave the following testimony:

- The male Tenant stated that he asked the Landlord's agent about having a therapy dog, and that he was under the understanding that he just needed a letter from his Doctor or nurse practitioner.
- The male Tenant became emotional and asked the Landlord's agent to consider letting the Tenants stay if he found another home for his dog.

The Tenants' witness gave the following affirmed testimony:

- The witness stated that the male Tenant is her client whom she sees on Tuesdays. She testified that in late August 2013, she spoke to the male Tenant's nurse practitioner and advised that it would be helpful for the Tenant to have a therapy dog to aid him with his PTSD symptoms.
- The witness testified that the male Tenant obtained a dog sometime between September 3 and 10, 2013.
- The witness stated that there is a distinction between having a pet and having a therapy dog for wellness reasons. She said it was similar to the difference between the relaxing qualities of a regular massage and the healing benefits of a therapeutic massage.
- The witness submitted that there was confusion with respect to the Landlord's requirements and that it was not the Tenants' fault. She stated that on March 7, 2014, at 2:00 p.m., the Tenants could have their dog evaluated by the Red Cross as a suitable animal for animal assisted therapy (a "therapy dog").

**Analysis**

When a tenant applies to cancel a notice to end tenancy, the onus is on the landlord to provide sufficient evidence that the tenancy should end for the reasons provided on the notice to end tenancy.

Did the Tenant breach a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so?

In order to support this reason to end the tenancy, the Landlord must provide sufficient evidence that the Tenant:

1. breached a **material term** of the tenancy agreement; and
2. that the breach was not corrected within a reasonable time after written notice to do so.

Residential Tenancy Policy Guideline 8 provides, in part:

“A material term is a term that the parties **both agree** is so important that the most trivial breach of that term gives the other party the right to end the agreement.

To end a tenancy agreement for breach of a material term the party alleging a breach – whether landlord or tenant – must inform the other party in writing:

- that there is a problem;
- that they believe the problem is a breach of a material term of the tenancy agreement;
- that the problem must be fixed by a deadline included in the letter, and that the deadline be reasonable; and
- that if the problem is not fixed by the deadline, the party will end the tenancy.”  
[my emphasis added]

Clause 21 of the tenancy agreement states:

21. Pets

(a) Any term in this tenancy agreement that prohibits, or restricts the size of, a pet or that governs the tenant's obligations regarding the keeping of a pet on the residential property is subject to the rights and restrictions under the *Guide Animal Act*.

(b) The tenant may NOT keep pets in the rental unit and on the residential property without the prior written consent of the Landlord.

The *Guide Animal Act* provides the following definitions:

**"guide animal"** means a guide animal

- (a) prescribed under section 8, or
  - (b) for which a certificate has been issued under section 7
- if that animal is used by a person with a disability to avoid hazards or to otherwise compensate for a disability;

**"person with a disability"** means a person who is apparently blind or otherwise disabled and is dependent on a guide animal or white cane;

It is important to note that there is draft legislation (Guide and Assistance Dog Act) which strives to clarify and expand the roles for which guide animals are currently certified. However, the *Guide Animal Act* does not currently specifically recognize therapy animals.

The Landlords submit that the Tenants breached Clause 21(b) of the tenancy agreement and that Clause 21(b) is a material term of the tenancy. However, I find that the circumstances surrounding this particular case are such that there was question in the minds of both the Landlord and the Tenants as to whether or not the Tenants' dog qualified as a "guide animal" and therefore whether the Tenants were protected or not under clause of 21(a) of the tenancy agreement. The Landlord had advised the Tenants that it would allow the Tenants to keep the dog if they provided documentation from the male Tenant's doctor or nurse practitioner. Therefore, I find that the Notice is not an effective notice to end tenancy at the time it was issued and the Tenants' application to cancel it is granted. The tenancy remains in full force and effect until it is ended in accordance with the provisions of the Act.

The Tenants are cautioned that they must provide the Landlord with documentation that the Tenants' dog is a guide animal and therefore subject to exclusion from the "no pets" rule. If the Tenants do not provide sufficient documentation within one month of receipt of this Decision, then I order that the Tenants comply with Clause 21(b) of the tenancy agreement. Failure to do so will be cause for the Landlord to end the tenancy.

I make no order with respect to recovery of the filing fee.

### **Conclusion**

The Tenants' application is granted. The Notice is cancelled. The tenancy will continue until it is ended in accordance with the provisions of the Act.

**The Tenants must provide the Landlord with documentation that Tenants' dog is a guide animal and therefore excluded from the "no pets" rule. If the Tenants do not provide sufficient documentation within one month of receipt of this Decision,**

**then I order that the Tenants comply with Clause 21(b) of the tenancy agreement. Failure to do so will be cause for the Landlord to end the tenancy.**

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: February 14, 2014

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Residential Tenancy Branch