Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding METRO VANCOUVER HOUSING CORPORATION
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC, OLC, O, FF

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* ("*Act*") for:

- cancellation of the landlord's 1 Month Notice to End Tenancy for Cause, dated April 9, 2015 ("1 Month Notice"), pursuant to section 47;
- an order requiring the landlord to comply with the *Act*, regulation or tenancy agreement, pursuant to section 62;
- other unspecified remedies; and
- authorization to recover the filing fee for this application from the landlord, pursuant to section 72.

The landlord's agent, SP ("landlord") and the tenant attended the hearing and were each given a full opportunity to be heard, to present their sworn testimony, to make submissions and to call witnesses. The landlord confirmed that she was the area manager for the landlord company named in this application and that she had authority to speak on its behalf at this hearing. The landlord called the building manager, "witness MT," to testify on its behalf at this hearing. Both parties were given an opportunity to ask questions and to cross-examine the witness.

The tenant confirmed receipt of the landlord's 1 Month Notice on April 9, 2015, by way of posting to her rental unit door. In accordance with sections 88 and 90 of the *Act*, I find that the tenant was duly served with the landlord's 1 Month Notice on April 9, 2015.

The tenant testified that she personally served the landlord's receptionist agent with the tenant's amended application for dispute resolution hearing package ("Application") on April 11, 2015. The landlord confirmed receipt of only the original application and evidence, not the amended application. However, the landlord confirmed during the

hearing that she was aware that the tenant was disputing the 1 Month Notice and asking for an order to keep the tenant's dog in the rental unit, which was provided for in the "details of the dispute" section in the tenant's original application. The landlord also confirmed that she had reviewed the tenant's original application and evidence and that she was prepared to proceed with the hearing on the basis of the tenant's amended application, all of the claims of which I confirmed orally during the hearing. Based on the sworn testimony of the parties, I find that there is no prejudice is considering the tenant's amended Application at this hearing, as the landlord was notified of the hearing, the details of the claims being made by the tenant and she had an opportunity to review all of the tenant's evidence. In accordance with section 89 of the *Act*, I find that the landlord was duly served with the tenant's amended Application.

The landlord testified that the tenant was served with the landlord's written evidence package on April 16, 2015, by way of registered mail. The tenant confirmed receipt of the landlord's written evidence package. In accordance with sections 89 and 90 of the *Act*, I find that the tenant was duly served with the landlord's written evidence package.

During the hearing, the landlord made a verbal request for an order of possession, if the tenant's application to cancel the 1 Month Notice, was dismissed.

Issues to be Decided

Should the landlord's 1 Month Notice be cancelled? If not, is the landlord entitled to an order of possession?

Is the tenant entitled to an order requiring the landlord to comply with the *Act*, regulation or tenancy agreement?

Is the tenant entitled to other unspecified remedies?

Is the tenant entitled to recover the filing fee for this application from the landlord?

Background and Evidence

The landlord testified that this month to month tenancy began on September 1, 1992 and continues to present. Monthly rent in the current amount of $758.00 is payable on the first day of each month. A security deposit of $297.00 was paid by the tenant and the landlord continues to retain this deposit. A written tenancy agreement was provided by the landlord for this hearing.

The tenant entered into written evidence a copy of the 1 Month Notice. In that notice, requiring the tenant to end this tenancy by May 31, 2015, the landlord cited the following reasons for the issuance of the notice:

- *Tenant or a person permitted on the property by the tenant has:*
  - *seriously jeopardized the health or safety or lawful right of another occupant or the landlord.*
- *Breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.*

In accordance with subsection 47(4) of the *Act*, the tenant must file her application for dispute resolution within ten days of receiving the 1 Month Notice. In this case, the tenant received the 1 Month Notice on April 9, 2015. The tenant amended her Application to dispute this notice on April 10, 2015. Accordingly, the tenant filed within the ten day time limit under the *Act*.

The landlord stated that the 1 Month Notice is based on two incidents between the tenant's dog, a coonhound, and witness MT. The landlord indicated that the tenant's dog is aggressive and that it jeopardized the health and safety of witness MT and other residents in this family complex. The landlord maintained that pre-arranged appointments have to be made with the tenant to remove her dog, in order for witness MT and other contractors to enter the rental unit, which did not have to be done before. The landlord emphasized that due to complaints from witness MT, they are concerned about the safety of his work environment and any potential liability and implications through worker's compensation or the landlord's corporate policy.

Witness MT testified that the first incident occurred on October 3, 2013 when he was bitten by the tenant's dog. Witness MT stated that he is experienced with animals and knows not to startle them. He indicated that he attended at the tenants' rental unit on the above date to perform some work and ensured that the tenant's dog was initially under the control of the tenants' roommate at that time, "JS," before he entered the rental unit. Witness MT indicated that he thought the dog was leashed but realized it was not, when the dog suddenly lunged at him twice and bit him on the stomach with 1 tooth. He explained that he suffered a puncture wound and treated it himself with disinfectant. Witness MT confirmed that he did not seek any medical attention or treatment for this dog bite and he did not take any time off from work due to this incident. He testified that he reported the incident to the manager who was on duty at the time and that he completed an incident report, which was submitted with the landlord's written evidence package. The landlord confirmed that she issued a letter, dated October 21, 2013, to the tenant, documenting this incident and asking the tenant

to remove her dog from the rental unit by November 15, 2013. The landlord provided a copy of this letter with its written evidence package. The landlord then permitted the tenant to keep her dog in the rental unit if it attended obedience school and if the tenant kept the dog away from the rental unit when witness MT and other contractors performed work there.

Witness MT stated that the second incident with the tenants' dog occurred on January 15, 2015, when the dog lunged at him while he was passing by the tenant's rental unit gate. Witness MT stated that the dog was leashed and that because he was paying attention, he jumped out of the way and managed to avoid any contact with the dog. He maintained that he did not seek any medical attention or miss any time off from work due to this incident. He reported the incident to the landlord as well as the City animal control officer. The landlord provided a copy of two reports documenting the above complaints. The landlord issued a letter, dated February 13, 2015, advising the tenant about the second incident and asking her to remove the dog by February 28, 2015. The tenant provided a copy of a letter, dated February 20, 2015, to the landlord's more senior manager, as well as a statement, dated March 1, 2015, from JS, stating that the dog was startled by the sudden appearance of witness MT from behind a 6 foot 4 inch tall cedar hedge and that the dog was on a leash and under the control of JS during this second incident. The landlord indicated that an investigation was done by this senior manager and that the deadline for the tenant to remove her dog was extended to the end of March 2015 by way of another letter, dated February 27, 2015, from the landlord to the tenant.

Witness MT indicated that he is apprehensive regarding his own safety and other tenants' and contractors' safety around the tenant's dog. He indicated that the tenant's dog reaches the height of a child's face and that the dog is out of control, such that it might harm others. Witness MT stated that he will not allow himself or any other contractors to enter the tenant's rental unit unless the dog is not present. Witness MT also indicated that the dog has to be leashed while in common areas at the rental property.

The tenant testified that her dog is a good, controlled dog that is able to play with other animals. She said that she has advised the landlord that she works in close proximity to the rental unit and that she is available at any time by way of telephone, if any issues arise regarding her dog. The tenant indicated that she requires the dog to be present in her rental unit for safety and protection because she lives in an unsafe neighbourhood and items have been stolen from her rental unit when the dog was not there. The tenant stated that she forgot to complete a timely application and pay a pet damage deposit when the new pet policy was introduced by the landlord because her previous

dog was “grandfathered” into the system, as per the landlord’s policy, and that dog subsequently died.

The tenant acknowledged that she received two written warnings, dated February 16 and 17, 2015, from the City animal control department, requiring her to obey the bylaws, keep her dog on a leash and prevent the dog from attacking people or other animals. The tenant stated that these warnings are simply a guide to the public from making mistakes, as she spoke with the bylaw officer about these issues. The tenant stated that she has had her dog assessed by two different people who produced reports. Both parties agreed that the tenant has removed the dog from the rental unit during subsequent visits by witness MT and other contractors to perform work and that the tenant keeps the dog leashed while in common areas of the rental property.

Analysis

While I have turned my mind to all the documentary evidence and the testimony of the parties and witness MT, not all details of the respective submissions and arguments are reproduced here. The principal aspects of the tenant’s claim and my findings around each are set out below.

Where a tenant applies to dispute a 1 Month Notice within the required time limits, the onus is on the landlord to prove, on a balance of probabilities, the grounds on which the 1 Month Notice is based.

Serious jeopardy to health, safety or lawful right of another occupant or landlord

I find that the landlord has not shown that the lawful rights of the landlord or any other occupants were “seriously jeopardized,” as no evidence was provided by the landlord regarding this claim.

The landlord did not provide sufficient evidence that witness MT’s health or safety was “seriously jeopardized” by the tenant’s dog. Witness MT did not seek any medical attention or treatment for either of the two incidents. Witness MT did not take any time off from work or suffer any wage loss as a result of either incident. Witness MT testified that he has not considered leaving his employment due to either incident. Witness MT agreed that the dog is no longer present when he attends at the rental unit to complete work or repairs. Witness MT agreed that appointments are now scheduled in advance with the tenant, in order to ensure that the dog is not present for appointments at the rental unit. Therefore, I find that witness MT’s health and safety was not “seriously jeopardized” during these two incidents.

I find that there is a lengthy period of time of over one year between the October 3, 2013 incident and the January 15, 2015 incident with witness MT. After the first incident in 2013, the tenant had her dog assessed by a professional dog trainer who performed a training protocol and discussed the incident with the tenant. The tenant provided a copy of a letter, dated November 3, 2013, from SB, the professional dog trainer, indicating that the bite was an isolated incident and that with proper structure and guidance, that incident would not happen again. The tenant also took her dog to obedience school, which is referenced in the letter. The second incident did not result in any physical contact with witness MT. The tenant stated that her dog can be startled by people walking by, particularly given the high hedges at the rental unit, of which the tenant provided photographic evidence indicating the measured height. The landlord did not provide any other written complaints from other tenants or employees of the landlord, regarding health or safety concerns with the tenant's dog.

The tenant provided a signed petition, signed by 17 other tenants who live in the area surrounding her rental unit. 10 of these other tenants have children, while 6 do not and 1 is unknown. Most of the tenants signed the petition in March 2015. This petition indicates that the other tenants do not have a problem with the tenant's dog remaining at the rental unit with the tenant. The tenant testified that these other tenants are not afraid of her dog. The tenant stated that some people did not sign the petition because they were not home when she went to ask for their signature, some people did not want to get involved in this dispute and at least one unit was vacant.

The tenant provided a recent behaviour assessment report from "SD," dated March 19, 2015, indicating that the dog "shows no indication of aggression" and "reveals a well controlled and socialized hound" and that "there is no reason for concern in regards to public safety around [the dog]." The tenant provided a copy of SD's resume, indicating that she is currently the owner and behaviour consultant for a dog training service and that she is a certified dog behaviour consultant, who possesses a diploma of dog training and behaviour consulting.

I find that if the landlord's or other occupants' health, safety or lawful rights were at risk, appropriate direct action should have been taken as soon as possible by the landlord. The landlord provided continuous extensions to the tenant to remedy the situation. After the first incident, rather than having the dog removed in November 2013, the tenant was permitted to keep the dog in the rental unit as long as the dog attended obedience school. Nothing was done after this period of time by the landlord, presumably because the situation was remedied by the tenant. Over one year later in January 2015, after the second incident, the tenant was told to remove her dog by the end of February 2015 and then it was extended until the end of March 2015.

Therefore, I find that the landlord and witness MT did not provide sufficient medical, documentary or other evidence that their own health or safety was "seriously jeopardized" by the tenant's dog as per section 47(1)(d)(ii) of the *Act.*

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

The landlord indicated that the tenant was asked to remove her dog on two occasions and she failed to do so. However, after the first incident, the tenant was allowed to keep her dog in the rental unit, following obedience school for the dog. Thus, the tenant did not fail to comply with the landlord's terms following the first incident. After the second incident, the tenant applied for dispute resolution to dispute eviction proceedings against her and for an order for the landlord to permit her to keep the dog in the rental unit. The landlord's pet policy permits a dog in the rental unit unless there is breach of the rules and regulations regarding pets. The landlord issued an eviction notice following two breach letters to the tenant after the above two incidents, despite the landlord's pet policy #2 that a termination notice would be served following three breach letters. The landlord stated that the tenant's dog fell under pet policy #3, which states that an immediate eviction notice may be given following any aggressive pet behaviour. However, I am not satisfied that two isolated incidents over one year apart qualify as "aggressive pet behaviour," particularly when the second incident did not involve any physical contact and the first incident did not qualify for medical attention or time off work, as per witness MT's evidence. Therefore, I do not find that the tenant breached a material term of the landlord's pet policy by failing to remove the dog after the second incident.

During the hearing, the landlord revised its position to indicate that the tenant's dog does not fall into one of the disallowed dog breeds listed in the landlord's pet policy. Initially, in their letter to the tenant, dated October 21, 2013, the landlord indicated that the tenant's dog falls into the category of an "unaccepted breed," as noted in the pet policy clause for "types/breeds of dogs that would not be accepted." Accordingly, I do not find that the tenant failed to comply with a material term by having a disallowed breed of dog.

Witness MT indicated that the tenant's dog is larger than 40 pounds in weight, contrary to the landlord's pet policy. The tenant indicated on her pet application and registration form that was not accepted by the landlord, that the dog was 45 pounds in weight. The tenant stated that the landlord has allowed at least three other tenants to keep dogs of similar sizes to the tenant's dog, at the same rental property. I find that the landlord has known about the tenant's pet registration application, a copy of which the tenant

provided with her Application, since October 2013 and has done nothing to enforce it, regarding the weight of the tenant's dog. The landlord has not provided any written evidence that it was asking the tenant to remove the dog because of the weight of the animal. The landlord did not provide any written evidence that it was evicting the tenant based on the weight of the dog. The landlord did not provide any notice prior to this hearing that the weight of the dog was an issue and a breach of a material term of this tenancy. The issue was raised by witness MT at the hearing, not the landlord. Accordingly, the tenant has not had an opportunity to correct any possible breach of the weight restriction in the pet policy because written notice was not provided to her by the landlord.

The landlord testified that the tenant's pet registration application was rejected because of the first incident with witness MT and the landlord wanted to wait to see whether the situation was remedied before allowing the tenant to register her dog. However, the landlord claimed in its written evidence and in testimony at this hearing, that the tenant could not have a dog in the rental unit because she did not register the dog or pay a pet damage deposit as required by the policy. As per both parties' testimony, the landlord refused to register the tenant's dog or accept a pet damage deposit from the tenant. The landlord then claimed that she forgot about the pet damage deposit due to a passage in time. I find that the landlord waived its right to enforce the pet policy regarding registration of the dog by refusing to accept the tenant's application and pet damage deposit. The landlord has allowed the tenant to keep a dog in her rental unit for over 2.5 years since October 8, 2012, when the tenant says she acquired the dog. The landlord has known about the dog since at least the first incident in October 2013 and did nothing to enforce its pet policy, including taking any eviction proceedings against the tenant at that time. Therefore, I find that the failure of the tenant to register her dog is not a breach of a material term of the landlord's pet policy, as this requirement was waived by the landlord.

I find that the landlord did not provide sufficient evidence to demonstrate that the tenant has failed to comply with a material term and has not corrected the situation within a reasonable time after the landlord gives written notice to do so, as per sections 47(1)(h)(i) and (ii).
Accordingly, I am not satisfied that the landlord has met its onus, on a balance of probabilities, to end this tenancy for cause, based on the reasons in sections 47(1)(d)(ii) and sections 47(1)(h)(i) and (ii) of the *Act*.

For the reasons outlined above, I allow the tenant's application to cancel the landlord's 1 Month Notice, dated April 9, 2015. I dismiss the landlord's request for an order of possession. The landlord's 1 Month Notice, dated April 9, 2015, is cancelled and of no

force or effect. This tenancy continues until it is ended in accordance with the *Act*. The tenant is permitted to reside in the rental unit with her dog, the coonhound, for the remainder of this tenancy, unless the dog is required to be removed as per the City animal control department or by order of a Court or the Residential Tenancy Branch.

As the tenant was successful in her Application, she is entitled to recover the $50.00 filing fee from the landlord.

Conclusion

The tenant's application to cancel the landlord's 1 Month Notice, dated April 9, 2015, is allowed. The landlord's request for an order of possession is dismissed. The landlord's 1 Month Notice, dated April 9, 2015, is cancelled and of no force or effect. This tenancy continues until it is ended in accordance with the *Act*. The tenant is permitted to reside in the rental unit with her dog, the coonhound, for the remainder of this tenancy, unless the dog is required to be removed as per the City animal control department or by order of a Court or the Residential Tenancy Branch.

The tenant is entitled to deduct $50.00 from a future rent payment at the rental unit, in full satisfaction of the monetary award for the filing fee for this Application.

The tenant's application for "other" unspecified remedies is dismissed, as the tenant did not provide any evidence with respect to this portion of her claim.

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 13, 2015

Residential Tenancy Branch