



# Dispute Resolution Services

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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

### Introduction

This was a hearing with respect to the tenant's application to cancel a Notice to End Tenancy for cause and for other relief. The hearing was conducted by conference call. The tenant and the landlord's representatives called in and participated in the hearing and I heard testimony from the landlord's witness. The landlord and the tenant exchanged documentary evidence prior to the hearing. The tenant complained that the landlord's documents were given to her by the landlord on October 3, 2016 by sliding them under the door of the rental unit. The tenant did not submit that she has been prevented or hampered in responding to the landlord's evidence due to the timing or method of delivery of the landlord's evidence. I have accepted and considered the landlord's documents as well as the tenant's documents in arriving at a decision in this matter.

### Issue(s) to be Decided

Should the one month Notice to End Tenancy for cause dated September, 2016 be cancelled?

Is the landlord entitled to an order of possession pursuant to the Notice to End Tenancy?

### Background and Evidence

The rental property is a subsidized housing complex in Vancouver. The rental unit is a two bedroom townhouse. The tenancy began in September, 1992. The tenant is the owner of a coonhound dog that lives with her in the rental unit. By letter dated July 20, 2016 the landlord wrote to the tenant to report that the landlord received a written complaint that the tenant's dog had bitten someone. The landlord demanded in the letter that the tenant find another home for her dog. The landlord said that the dog must

be removed to another permanent home by September 1, 2016. The landlord requested that the tenant provide written confirmation of compliance.

The tenant filed an application for dispute resolution on August 24, 2016 to challenge the landlord's direction that she remove her dog from the rental unit.

On September 9, 2016 the landlord served the tenant with a one month Notice to End Tenancy for cause. The Notice to End Tenancy required the tenant to move out of the rental unit by October 31, 2016. The landlord stated three reasons for the Notice; that the tenant has significantly interfered with or unreasonable disturbed another occupant or the landlord; that she has seriously jeopardized the health or safety or lawful right of another occupant or the landlord and that the tenant has breached a material term of the tenancy agreement. The tenant then amended her application to dispute the Notice to End Tenancy.

The tenant's dog was the subject of a previous dispute resolution proceeding. The tenant applied to dispute a Notice to End Tenancy for cause. A hearing was conducted by conference call on May 5, 2015 and a decision was issued on May 13, 2015. The tenant applied to cancel a one month Notice to End Tenancy for cause that was served on April 9, 2015. According to the May 13<sup>th</sup> decision the Notice to End Tenancy was given because the landlord alleged that the tenant's dog was aggressive and jeopardized the health and safety of occupants of the rental property. According to the landlord's witness he was bitten by the dog on October 3, 2013 and suffered a minor wound. The landlord requested that the tenant remove the dog, but later relented and allowed the dog to remain if it attended obedience school and was kept out of the rental unit when maintenance workers were scheduled to attend. The landlord's witness testified that a second incident occurred on January 15, 2015 when the tenant's dog lunged at him. The dog was leashed and he managed to jump out of the way and avoid contact. The matter was reported to the City of Vancouver's animal control officer. According to the tenant the dog was under control at the time, but was startled by the sudden appearance of the witness from behind a hedge. In her reasons the arbitrator noted the length of time that elapsed between the two incidents. The arbitrator said in her decision that:

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.

With respect to the current Notice to End Tenancy, the landlord's representative submitted that the tenant does not have the landlord's permission to keep the dog at the rental unit. The landlord submitted that the dog is not an approved breed; it is too large and too aggressive to be kept in this family housing complex and the latest incident which occurred on June 21, 2016 constitutes ample grounds to end the tenancy because the tenant has failed to comply with the requirement to remove the dog. The witness, Ms. D.V. who is the sister of an occupant of the rental complex, reported the incident to the landlord and provided a written statement. She said that in addition to the complaint to the landlord, she has also made a complaint to the City animal

control officer. M.S. D.V. said that she was babysitting her 22 month old niece. It was after 6:00 P.M. and they were outside in front of the entrance gate to the rental unit. The tenant parked her vehicle in the parking lot and approached to say hello. The tenant said she was going to say "Hi" to her dog. The witness's niece said she wanted to say "Hi" to the dog so the tenant picked her up and opened the door to the rental unit. The witness said that the moment the door was open, the tenant's dog raced out past the tenant and without provocation she bit the tenant's hand and then continued out into the yard. The witness yelled that the dog had bitten her. The witness asked the tenant to pass her niece to her so she could return home. According to the witness the tenant refused, saying she needed to hold her until they left the yard so the dog would not hurt her. Once out of the yard she took her niece from the tenant and entered her sister's house. Shortly after the incident the tenant came to ask the witness if she was okay. The witness said she was not okay and intended to call the animal control department and the landlord.

The landlord submitted pictures of the witness's wound to her finger. The witness sustained a puncture wound above the second knuckle of one finger. The skin was broken. The witness said it was not a bad bite, but she did receive a tetanus shot. The witness reported the incident to the City of Vancouver. An animal control officer with the City commenced an investigation into the incident. The tenant responded to the investigation and supplied a written statement at the request of the City. The tenant submitted a copy of her statement as evidence. The tenant's written statement did not contradict the testimony of the witness. The tenant did say that she expected the dog to be in the yard waiting for her, but she was in the house and woke when the tenant opened the door. She said the dog was startled when she awoke and may have thought the witness was an intruder. The tenant said in her statement that she has practiced meeting children with the dog and the dog shows no interest in them.

The tenant corresponded with the City of Vancouver. She submitted an email response from the animal control officer dated September 13, 2016. The officer confirmed that the file was still an open investigation and it had not yet been forwarded to the prosecution office. In a later email dated September 25, 2016 the officer confirmed that she was investigating the alleged bylaw infraction under the provision that a person who keeps a dog must not permit, suffer, or allow the dog to bite, attack or injure a person or domestic animal. She said that her report and recommendations would be forwarded to the by-law prosecution office for review, but the prosecution office was not obliged to accept her recommendations and could submit their own charge recommendations. She said the possible outcomes could include the following:

- A Warning Aggression Letter

- A Considered Aggressive Letter (where the dog must wear a muzzle for the life of the dog)
- Court appearance for bylaw violation charges ranging from a \$250 - \$10,000 fine
- Court conditions/court orders

The animal control officer said that:

Because these cases are a matter of public safety, unfortunately, they cannot be resolved just by simply issuing a violation fine. These issues must be addressed in court and your level of participation may likely involve attending court. Should it go that far, all parties will be asked to attend, including myself. There is also a chance that this case may not ever get to court, depending on if the case meets all of the charge elements, the recommendation(s) and how the prosecution office would like to proceed.

The tenant submitted a copy of a behaviour assessment of her dog prepared in 2015. The author of the report, a certified dog behaviour consultant, said the tenant's dog is a well behaved and socially appropriate dog and her behaviour was not indicative of an aggressive dog.

The tenant submitted a letter from her physician dated September 19, 2016. The physician stated in the letter that the tenant has a history of emotional problems. He said that the dog has helped her mentally cope with a history of stressful family encounters and the dog provides her with cognitive therapy. He stated his concern that the tenant might experience a mental breakdown were she to lose either her dog, or her home through eviction.

The tenant conducted a survey of her immediate neighbours to ask whether they had any problem with her dog remaining in the rental unit with the tenant. In the typed survey document the tenant prefaced the survey form with the written statement that within the tenant's yard her dog had nipped a neighbour's finger causing it to bleed, but not requiring further medical attention. She stated that the landlord was asking that the dog be removed from her home or that the tenant be evicted. The persons who signed acknowledged that they have no problems with the tenant's dog remaining at the rental unit. There were 14 signatories; according to the tenant one of the persons who signed is the tenant's neighbour who is the sister of the bite victim and mother of the little girl held by the tenant during the incident.

### Analysis

The landlord submitted that the tenant's dog does not comply with the landlord's pet policy; it is a prohibited breed and the tenant's application to have the dog has not been accepted by the landlord. The landlord submitted that the bite incident provides confirmation that the tenant's dog is aggressive and is a threat to other occupants and visitors to the rental property. The landlord requested an order of possession because the tenant has refused to comply with the landlord's direction to find a new home for the dog.

The landlord's pet policy and the tenant's failure to register her dog were addressed in the May 13, 2015 arbitrator's decision, salient portions of which are reproduced above. The decision is binding upon me and, as noted in that decision:

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 sole issue for consideration therefore is whether the incident of June 21, 2016 and the tenant's refusal to remove her dog justifies her eviction on the basis that the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord, or seriously jeopardized the health or safety or lawful right of another occupant or the landlord. The landlord has also characterized the occurrence as a breach of a material term of the tenancy agreement and pet policy which requires the tenant to care for her pet in a responsible manner and not to permit it to bite or act aggressively toward any person. The landlord submitted that the Notice to End Tenancy is justified, based on the breach of a material term of the tenancy agreement.

The bite sustained by the witness, D.V. was not serious, but it was not trivial. The landlord submitted that the incident demonstrates that the tenant's dog is aggressive, it has a propensity to bite and the tenant's refusal to find a new home for the dog constitutes grounds to end the tenancy.

The tenant submitted evidence to suggest that the recent incident was an anomaly, not an indication of an aggressive temperament or a propensity. The tenant's documents, including the survey results suggests that the landlord's concerns about the tenant's dog are not shared by her neighbours, including the mother of the child who was present at the June incident. It is apparent from the tenant's submissions that, since the June 21 incident, she is exercising extreme vigilance with respect to her dog's interactions with people and animals in and around the rental property. The City's investigation is ongoing and it may result in repercussions as outlined above.

I find that the June 21, 2016 biting incident must be considered in context, including the tenant's response to the incident. The incident occurred at the rental unit where the dog might be disposed to act protectively towards intruders. The tenant took the incident very seriously; she is cooperating with the City's investigation. The tenant's immediate neighbours do not consider the dog as a threat to their well-being and I find that the incident does not amount to sufficient cause to require the tenant to remove her dog or move out of the rental unit. I find that the Notice to End Tenancy dated September 2016 should be cancelled and the tenancy be allowed to continue on the same terms stated in the May 13, 2015 decision. It is open to the City of Vancouver to make an order arising out of the incident that could consist of a warning or other orders that could require the removal or muzzling of the dog.

Of course if there is another incident or occurrence involving the tenant's dog that raises any cause for concern the landlord is at liberty to serve another Notice to End Tenancy and in such a case, the history of events, including the June 21<sup>st</sup> incident will be factors to be considered in a future Residential Tenancy Branch proceeding.

### Conclusion

The tenant's application to cancel the Notice to End Tenancy for cause has been granted. I do not award the recovery of the filing fee for this application.

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: November 16, 2016

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Residential Tenancy Branch