



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes: CNC

### Introduction:

The Application for Dispute Resolution filed by the Tenant seeks an order to cancel the one month Notice to End Tenancy dated March 21, 2017.

A hearing was conducted by conference call in the presence of both parties. On the basis of the solemnly affirmed evidence presented at that hearing, a decision has been reached. All of the evidence was carefully considered.

Both parties were given a full opportunity to present evidence and make submissions. Neither party requested an adjournment or a Summons to Testify. Prior to concluding the hearing both parties acknowledged they had presented all of the relevant evidence that they wished to present.

I find that the one month Notice to End Tenancy was served on the Tenant on by mailing, by registered mail to where the tenant resides on March 26, 2018. The tenant received the package on March 28, 2018. Further I find that the Application for Dispute Resolution/Notice of Hearing filed by the tenant was personally served on the landlord on April 5, 2018. With respect to each of the applicant's claims I find as follows:

### Issues to be Decided:

The issue to be decided is whether the tenant is entitled to an order cancelling the one month Notice to End Tenancy dated March 21, 2018?

### Background and Evidence:

The tenancy began on December 1, 2014. The tenancy agreement is in writing. The present rent is \$1709 per month payable in advance on the first day of each month. The tenant paid a security deposit of \$747.50 on November 27, 2014. The rental unit is part of a duplex.

The tenant suffers from PTSD. She testified she has a therapy dog in training that has assisted her in her day to day living. However, the dog has not yet been certified under the Guide Dog and Service Dog Act and it will be a period of time before the dog can be tested.

The tenancy agreement contained a "no pet" clause. The clause provides that the tenant must not keep or allow on the residential property any animal including a dog ... unless specifically permitted in writing in advance by the landlord. The clause also provides that is a material term of the tenancy agreement and the landlord has the right to terminate the tenancy agreement after giving reasonable notice if the tenant breaches this clause. The clause further provides that it is subject to the rights and restrictions under the Guide Animal Act (I assume the parties are referring to the Guide Dog and Service Dog Act which is referred to in the correspondent between the parties. The landlord lives a few houses away from the rental unit. The landlord is terrified of dogs.

Grounds for Termination:

The Notice to End Tenancy identifies the following ground:

- 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 submitted a 4 page singled spaced summary of the facts which was carefully considered. The tenant does not dispute most of the facts but has made submissions that the term is not material or that the landlord failed to comply with the provisions of the Act and/or the tenant has complied. I determined it was not necessary to set out in detail the lengthy history of the interaction between the parties although the evidence was considered. The highlights include the following:

- The owner became aware that the tenant had a dog in July 2017 and contacted their agent.
- There are many e-mails relating to the unapproved pet and the removal of the unapproved pet. The tenant provided evidence that the dog assist her as the dog is a therapy dog. Much of the correspondence between the parties involves the landlord requesting that the tenant provide evidence that the dog is certified and the failure of the tenant to provide proper evidence.
- The landlord testified they have been more the patient with the tenant. They expressed extreme displeasure with the conduct of the tenant and testified it does not trust the tenant for the following reasons:
  - The tenant has misled the landlord at the start and on many other occasions.
  - The tenant ignored many of the landlord's requests to provide information.
  - The tenant has provided materials that do not properly establish the dog is certified.
- The tenant testified she was not attempting to mislead the landlord. Her efforts to have the dog trained have been restricted because of limited because of financial limitations. Further, the dog is young and cannot be certified at this stage. Finally he dog was involved in a car accident which has affected the short term ability to retrain the dog.
- The landlord relies on the following letters as evidence of giving the tenant written notice:
  - A letter dated October 23, 2017 which sets out the landlord's concerns, demands that the tenant remove the dog from the property or provide proof the dog is certified under the Guide Dog and Service Dog Act by November 22, 2017 failing which "we will have not alternative on behalf of the owner, but to issue a one month notice to end tenancy for cause." The landlord followed this with another letter dated November 22, 2017 extending the time to provide proof to January 22, 2018.
  - A letter dated February 13, 2018 making a third and final demand for proof that the dog is recognized by the BC Guide Doe or Service Dog Act, by March 1, 2018 and further stating that "If you do not comply with the above by March 1, 2018 we will either file for Dispute Resolution asking for an order t comply; or will serve you with a one month Notice to End Tenancy."
- The tenant responded with an email dated February 19, 2018 describing her situations to date and the setbacks she faced.
- On March 20, 2018 the landlord had a telephone discussion with the tenant and informed her of the possibility of being given a one month notice. During the conversation he offered her an opportunity to give written notice to end the tenancy. The landlord allowed the tenant until March 23, 2018 to respond.

- The tenant failed to respond and on March 26, 2018 the landlord sent the one month Notice to End Tenancy to the Tenant by registered mail. It was received by the tenant on March 28, 2018.
- In the evening of March 28, 2018 the tenant e-mailed the landlord stating that the dog has been removed from the property until her exam date to get tested for a dog certification as a service dog.

The tenant testified the dog is being fostered by a friend at her place. She visits the dog on a daily basis but this will hinder his training.

The owner's son testified they do not trust the tenant because she has deceived them on many occasions. He believes the tenant has had the dog on the rental property on occasion late at night. The tenant denies this. The owner's son testified the owner is terrified of dogs.

Analysis:

After carefully considering all of the evidence I determined the landlord has provided insufficient proof to establish that the dog has been on the rental property since March 28, 2018.

I agree with the submission of the landlord that they have been more than patient in dealing with the situation and that the tenant has been less than forthright in their interaction.

The tenant makes three submissions:

- a. The term is not a material term as the landlord not enforced it.
- b. The breach was rectified by the time the tenant received the Notice to End Tenancy.
- c. The landlord failed to provide the tenant with a reasonable time to rectify the breach.

The tenant submits that the term relied on by the landlord is not a material term as evidenced by the fact that the landlord has not rigorously enforced it. She testified the landlord was aware of a number of dogs in the community and that there have been dogs on the rental property and the landlord has not objected. The tenant relies on the case of *Al Stober Construction v. Long* 2001 BCSC 272 which includes the following

"[35] On the evidence before him, Arbitrator Covell concluded that the landlord had not consistently or uniformly enforced the "no pet rule". Although he did not spell out the reasoning that lack of uniform enforcement indicated that the term was therefore not material, it is implicit in his decision. This approach was not clearly irrational or such as to demand intervention by the court. If the term was "fundamental" to the agreement, the landlord would have rigorously enforced it. The arbitrator found as a matter of fact that it had not been enforced. The landlord has not persuaded me that the arbitrator's decision was patently unreasonable. Indeed, I would also find that it meets the standard of reasonableness simpliciter."

I do not accept the tenant's submission. The tenancy agreement provides that it is a material term and refers to the consequences of failing to adhere to it. While it is on a standard form tenancy agreement it appears the landlord has sufficient reason to make this a material term given their fear of dogs. The owner's son testified the landlord was unaware of dogs being on the rental property until July 2017. I am satisfied the landlord has acted consistently in attempts to enforce the term while at the same recognizing their obligations to comply with the Guide Dog and Service Dog Act. The Stober case does not apply in

this case. That case involved a situation where there were many tenants some of whom had dogs and the landlord attempting to enforce the clause against one tenant but ignoring the other tenants. This situation does not apply.

Secondly, I do not accept the submission of the tenant that the breach was rectified prior to the Notice to End Tenancy being received. The document evidence produced indicates the Notice to End Tenancy was picked up prior to the Tenant advising the landlord by e-mail that the dog had been removed.

Thirdly, the tenant submitted that the landlord failed to give the tenant a reasonable opportunity to rectify the breach. The tenant submits the landlord should have given the tenant 6 to 9 months from the February 13, 2018 letter as one can expect that it will take that long to train the dog. I do not accept this submission. In my view the reasonable time referred to in the tenancy agreement and the Act refers to a reasonable time to remove the unapproved pet from the property.

However, in my view I determined there are insufficient grounds to end the tenancy for the following reasons.

- The tenant has complied with the demand and the dog has been removed from the rental unit as of March 28, 2018. While the landlord alleged the tenant has returned with the dog at night I determined there was insufficient evidence to prove this allegation.
- I do not accept the submission of the landlord that the October 23, 2017 and November 22, 2017 letters amount to written notice as provided by the Act and tenancy agreement. While it states the landlord would have no alternative to give a one month notice the landlord proceeded for the next several months to work with the tenant and in my view the landlord has waived its right to rely on these letters as a sufficient breach letter as it continued to work with the tenants to obtain proper certification. .
- I determined the letter of February 23, 2018 is insufficient to be the breach letter which would set the basis of written notice under the Act. The letter provides that if the tenant fails to comply with the demand to provide proof of enrollment or remove the dog by March 1, 2018 the landlord will either file for a Dispute Resolution asking for an order to comply; or we will serve you with a one month Notice to End Tenancy. The alternative methods set out in the letter create an uncertainty which puts the tenant at a significant disadvantage. The tenant argued the term was not material and/or reasonable time was not given to rectify the breach. Implied with this submission is that tenant believes that she was entitled to have the dog in her home. The letter indicates the landlord may make an application for an order to comply. If the landlord proceeded in this way the issue would have been determined by an arbitrator in a situation where the loss of the tenancy would not be at risk. I determined the written notice was insufficient where it is capable to advising the tenant that the landlord may follow two different methods to resolve the dispute given the prejudice to the tenant..

#### Conclusion:

I determined the landlord has been more than patient in dealing with the tenant and I understand the landlord's concern about the less than forthright manner in which the tenant has dealt with them. The landlord has been more than understanding in attempting to get the tenant to provide evidence the dog is certified. In the end the landlord has been successful as the dog has been removed from the rental unit even though the tenancy is continuing.

In summary I determine the no pet provision of this tenancy agreement was a material term and could form the basis of a one month Notice to End Tenancy. I find that the breach was rectified as of March 28, 2018. I determined that the first two letters given by the landlord might have been a sufficient breach letter but the landlord continued to work with the tenant and waived their right to rely on those two letters. I determined the landlord could not rely on the February 23, 2018 letter as a breach letter that gave the basis of a one month Notice as it proposed two alternative way in how the matter could be resolved thus prejudicing the tenant.

As a result I ordered that the one month Notice to End Tenancy dated March 21, 2018 be cancelled. The tenancy shall continue with rights and obligations of the parties remaining unchanged.

**This decision is final and binding on the parties.**

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 10, 2018

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Residential Tenancy Branch