



Dispute Resolution Services

Page: 1

Residential Tenancy Branch Office of Housing and Construction Standards

A matter regarding Success Affordable Housing Society
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC OLC AAT

Introduction

This hearing was convened as a result of the Tenant's Application for Dispute Resolution. A hearing by telephone conference was held on September 7, 2018. The Tenant applied for multiple remedies, pursuant to the *Residential Tenancy Act* (the "Act").

Both parties attended the hearing and provided testimony. All parties were provided the opportunity to present evidence orally and in written and documentary form, and to make submissions to me. Both parties confirmed receipt of each other's documentary evidence.

I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence submitted in accordance with the rules of procedure and evidence that is relevant to the issues and findings in this matter are described in this Decision.

Preliminary and Procedural Matters

The Tenant applied for multiple remedies under the *Act*, a number of which were not sufficiently related to one another.

Section 2.3 of the Rules of Procedure states that claims made in an Application must be related to each other and that arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply.

After looking at the list of issues before me at the start of the hearing, I determined that the most pressing and related issues deal with whether or not the tenancy is ending. As a result, I exercised my discretion to dismiss all of the grounds the Tenant applied for, with leave to reapply, with the exception of the following claim:

- to cancel the 1 Month Notice to End Tenancy for Cause.

Issue(s) to be Decided

- Is the Tenant entitled to have the Landlord's 1 Month Notice (the Notice) cancelled?
 - If not, is the Landlord entitled to an Order of Possession?

Background and Evidence

Both parties provided a substantial amount of conflicting testimony during the hearing. However, in this review, I will only address the facts and evidence which underpin my findings and will only summarize and speak to points which are essential in order to determine the issues identified above. Not all documentary evidence and testimony will be summarized and addressed in full, unless it is pertinent to my findings, or unless the parties specifically pointed me to the evidence in their packages.

The Tenant acknowledged receiving the Notice on July 4, 2018. The Landlord issued the Notice for the following reason:

Tenant or a person permitted on the property by the tenant has:

- significantly interfered with or unreasonably disturbed 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.

The Landlord summarized and stated that the parties have a history of disputes, and have had previous hearings with respect to the Tenant and her affiliation with dogs, and the dog society she is involved with. The Landlord stated that the parties almost ended the tenancy last year, after disputing over the dog issue, but in January of 2018, they reinstated the tenancy agreement. Although the Landlord provided well over 100 pages of documentary evidence spanning back to before the last arbitration hearing, her testimony focused largely on the events that transpired since the tenancy was reinstated in January of 2018, and when the parties went over the terms and conditions of the tenancy agreement and the addendum.

The Landlord focused on the two most recent incidents where she alleges the Tenant breached the “building ban” that was imposed to prevent the Tenant from bringing pets into the building for business purposes. The Landlord stated that the Tenant is involved with a dog society, which the Tenant co-founded, and the Landlord feels that an affiliate of the Tenant, who attended the hearing as the Tenant’s advocate, is largely responsible for organizing dog society meetings and training in the free community meeting room (available for tenants) and also in the Tenant’s rental unit. The Tenant’s advocate is the same person who is the chair of the dog society. The Tenant stated that this individual is also a friend and her personal caretaker. The Tenant is confined to a wheelchair and utilizes her advocate as a support worker (this individual will be referred to as DM from herein.)

The Landlord stated that they issued a ban on June 6, 2018, (posted in the lobby, and delivered to the Tenant) stating that the dog society, and its representatives are not permitted to operate their business on or in the premises of the building.

The Landlord stated that the Tenant has breached the following “material” term of her tenancy addendum:

#6 – Use of Premises

Rental units in the building will be used only as private residences. No trade or business may be conducted from a rental unit without the prior written consent of the Landlord.

The Landlord stated that the Tenant was involved with an event on June 25, 2018, where she was observed bringing a few dogs into the building, and the DM was also present with her dog. The Landlord stated that she saw the video security footage (and provided screenshots) which shows that the Tenant let DM into the building with dogs, and the Landlord believes this was to conduct business for the dog society, since the Landlord knows that DM is affiliated with the society.

The Landlord issued the Notice on July 4, 2018, and again on July 6, 2018, the Landlord alleges that the Tenant breached the “ban” by allowing her deactivated door entry fob to be used by DM to come into the building. The Landlord stated that this was recorded by video and is evidence that the Tenant is knowingly bringing DM into the building in breach of the material term listed above. The Landlord alleges that the Tenant and DM continue to use the rental unit, and the community rental room to conduct business for the dog society.

The Landlord stated that she has given the Tenant several warning letters about these issues. The Landlord stated that the Tenant continues to ignore the warnings and continues to bring in DM, despite that ban stating the dog society, and affiliates are not allowed to conduct business onsite. The Landlord stated that the only dogs who are allowed to be in the community meeting room are certified guide dogs. The Landlord stated that when the Tenant rents the community room out, she agrees there are to be no pets in the room, except approved service animals, and that any commercial intentions must be reviewed and approved by the Landlord.

The Landlord stated that despite the warnings, the Tenant continues to bring uncertified guide dogs on the premises. The Tenant stated that although the dog society is not solely comprised of certified guide dogs, and their owners, the only dogs that have been on the premises are certified service animals and not for business purposes.

The Landlord stated that the Tenant has repeatedly breached material terms by allowing uncertified dogs into the community rental room (in addition to the incidents noted above the Landlord stated that there were also events on January 14, 2018, January 20, 2018, February 2, 2018, and April 29, 2018 where the Tenant breached this portion of the “community room rental form”.) The Landlord briefly mentioned these previous incidents in the hearing and stated that there was evidence that the events in the community room on these dates were business related, since there was “classroom” style seating. The Tenant denies that this was for business purposes.

The Tenant takes issue with the Landlord’s characterization of the not-for-profit society, her affiliation with it, and the nature of the events where the Landlord alleges she breached material terms of the tenancy agreement. DM stated that the Tenant is the co-founder of the dog society, but that any dogs that come on the property are certified guide dogs, despite what the Landlord thinks.

The Tenant stated that DM is her friend and her caretaker. The Tenant acknowledged that DM is affiliated with the dog society, but denies that she has breached any material terms of her tenancy agreement. The Tenant stated that it is not fair that her friend and caretaker be banned from coming on the premises. The Tenant stated that she requires assistance, as she is confined to a wheelchair. DM confirmed that she is the Tenant’s caretaker. The Tenant takes issue with the recent incident, on June 25, 2018, where the Landlord alleges that she was conducting business on behalf of the dog society. The Tenant stated that the society has a separate facility to work with dogs, and they don’t need to community room or the Tenant’s apartment for these purposes. The Tenant stated that on June 25, 2018, she was having a pizza

party, and some friends came over, as did a couple of dogs. DM stated that they were gathering in the Tenant's apartment, and were not conducting "business" for the society.

The Tenant feels it is a human rights issue if she is not allowed to have friends and caretakers over. The Tenant stated that the Landlord clearly does not understand her relationship with DM or with any of the dogs that visit.

The Tenant stated that her relationship with DM is not what the Landlord thinks. The Tenant denies doing any business with the dog society on the premises and stated that the recent "incidents", leading up to the Notice, were not commercial in nature whatsoever. The Tenant stated that since DM is her caretaker, and friend, as well as an affiliate with the dog society, she is entitled to come on the property, as she is not there for business purposes.

Analysis

In the matter before me, the Landlord has the onus to prove that the reasons in the Notice are valid.

I have reviewed the Notice issued by the Landlord and I find it meets the form and content requirements under section 52 of the *Act*. I note the Tenant received the Notice on July 4, 2018, and applied to dispute it on July 10, 2018.

The Landlord selected two grounds on the Notice, as follows:

- Tenant or a person permitted on the property by the tenant has:
 - significantly interfered with or unreasonably disturbed 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.

I note the Landlord only spoke to the second of the above grounds, and her testimony and presentation of evidence did not focus on the first ground. As such, the second ground will be the focus of my analysis.

The Landlord stated that the Tenant has breached a material term of the tenancy agreement for a couple of reasons. The Landlord stated that the Tenant has ignored warnings to stop using the community room for business purposes, and bringing in uncertified guide dogs. The Landlord also feels the Tenant is condoning the use of the premises for business purposes. However, I note the Landlord has provided insufficient evidence that the dogs shown in the video footage and witnessed onsite were not certified Service Dogs. DM stated that the only dogs that were in the meeting room were certified. Ultimately, I do not find there is sufficient evidence to establish that the dogs that were present when the Tenant rented the community room were not certified Service Dogs, and that she was in contravention of the community room rental agreement. Furthermore, I find the evidence indicates that the rental and use of the community room is governed by a separate agreement, outside of the tenancy agreement. Although the Tenant has agreed to abide by the rules of the community room rental when she uses it, I note that it is a separate agreement from the tenancy agreement. Although only tenants are able to rent the community room, I do not find the terms in the community room policy/agreement constitute a "material term" of the *tenancy agreement*, such that it would give the Landlord sufficient grounds to end the tenancy.

A Landlord may end a tenancy for breach of a material term but the standard of proof is high. To determine the materiality of a term, an arbitrator will focus upon the importance of the term in the overall scheme of the tenancy agreement, as opposed to the consequences of the breach.

It falls to the person relying on the term, in this case the Landlord, to present evidence and argument supporting the proposition that the term was a material term. 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. The question of whether or not a term is material and goes to the root of the contract must be determined in every case in respect of the facts and circumstances surrounding the creation of the tenancy agreement in question. It is possible that the same term may be material in one agreement and not material in another.

I note that the Landlord has stated that the rental building is a low-rent building managed in partnership with the city. The Landlord indicated that businesses are not allowed to operate on the premises because of the nature of the housing complex, which is why it is such an important piece of the agreement. I have already made my findings with respect to the alleged breach of the community room agreement, as above. However, the Landlord is also relying on item #6 of the tenancy agreement addendum, which states:

#6 – Use of Premises

Rental units in the building will be used only as private residences. No trade or business may be conducted from a rental unit without the prior written consent of the Landlord.

After reviewing the evidence and testimony on this matter, I note the Tenant is confined to a wheelchair, and that her relationship with DM is likely more than the Landlord has suggested. The Tenant stated that DM is a caretaker for her, and a friend. The Landlord appears to believe that when DM is on the premises, or in the Tenant's rental unit, with any dogs, that it is for business purposes (society related). However, I find the Tenant's testimony and the testimony from DM indicate otherwise. It appears that there may be several layers to the relationship between DM and the Tenant and I do not find there is sufficient evidence from the Landlord that the Tenant is conducting business for the society out of her rental unit. I do not find any of the photos or documentation prove on a balance of probabilities that business was being conducted in the apartment unit, including the evidence surrounding June 25, 2018 (the incident that occurred after the "ban"). I find it more likely than not that there is a personal relationship, beyond that of the society, between the Tenant and DM, and I find there is insufficient evidence to show that DM's presence on the premises with the Tenant is sufficient to show that the Tenant has breached a material term of her tenancy agreement, particularly considering DM is a caretaker and friend of the Tenant. The presence of other dogs and DM is not sufficient to show that the Tenant has conducted business in her rental unit. It appears there are different facets to the relationship between DM and the Tenant (friends, caretaker, dog society affiliates).

Despite all my findings thus far, I caution DM and the Tenant to be mindful of the terms that govern the tenancy agreement and pay attention to the constraints surrounding what activities may be conducted on the premises.

Given my findings on this matter, I find the Landlord has not established that there are sufficient grounds to end the tenancy. The Tenant's application is successful and the Notice received by the Tenant on July 4, 2018, is cancelled. I order the tenancy to continue until ended in accordance with the *Act*.

Conclusion

The Tenant's application is successful. The Notice is cancelled.

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: September 11, 2018

Residential Tenancy Branch