



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding EMV HOLDINGS CORP. and
[tenant name suppressed to protect privacy]

DECISION

Dispute Codes FFT, OLC

Introduction

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

- an order for the landlord to comply with the *Act*, regulation or tenancy agreement pursuant to section 62; and,
- authorization to recover the filing fee for this application pursuant to section 72.

Both parties attended the hearing and had full opportunity to provide affirmed testimony, present evidence, cross examine the other party, and make submissions. The landlord acknowledged receipt of the tenant's Notice of Hearing and Application for Dispute Resolution. Neither party raised issues of service. I find the parties were served in accordance with the *Act*.

The parties testified that another Residential Tenancy Branch hearing is pending. The hearing number for the related case is referenced on the first page of this decision. The landlord requested that I hear both applications together. Based on the representations of the parties, it appears the other hearing is related to the issue of possession of the rental unit.

I find that the issue of possession is not related to claim herein where the tenant is requesting permission to keep a service animal in the rental unit. Further, the tenant objected to the hearing of both applications at this time. Without the tenant's agreement to join the hearings, I find that it would be unfairly prejudicial to the tenant to combine the hearings without advance notice. I find that this would deprive the tenant of the right to provide evidence and witnesses and prepare for the hearing in violation of the natural laws of justice.

Accordingly, this hearing will not address the claims in the other pending hearing and this hearing proceeded with an adjudication of the tenant's claims herein only.

Issue(s) to be Decided

Is the tenant entitled to an order for the landlord to comply with the *Act*, regulation or tenancy agreement pursuant to section 62?

Is the tenant entitled to recover the filing fee for this application pursuant to section 72?

Background and Evidence

The tenancy agreement had a provision which prohibits pets without the landlord's written authorization. The parties both agreed that the tenant had authorization for her cat.

The tenant testified that she has been assigned a service dog for therapy and emotional support. A nurse testified that the service dog was a medical necessity for the tenant.

The tenant testified that the service dog was not certified as a service dog. However, the tenant testified that the paperwork has been submitted and she expects the dog to be certified as a service dog in the near future. The tenant claimed that she had the right to keep the dog in her rental unit pursuant to the *Guide Dog and Service Dog Act*.

The landlord testified that the tenant does not have the right to keep the dog in her rental unit pursuant to the *Guide Dog and Service Dog Act* because the dog has not been certified as a service dog.

The tenant is seeking an order permitted her to keep the service dog in the rental unit.

Analysis

The tenancy agreement prohibits pets. Accordingly, I find that the tenant is not permitted to have a dog at the rental unit unless the dog qualifies as a guide dog or service dog.

Residential Tenancy Policy Guidelines Number 28 states:

The Guide Dog and Service Dog Act of B.C. prohibits a landlord from discriminating against a person with a disability who intends to keep a guide or service dog in the residential premises.

Section 3(2) of the *Guide Dog and Service Dog Act* states that one cannot:

- (a) deny to a guide dog team, service dog team or retired guide or service dog team a manufactured home site or rental unit advertised or otherwise represented as available for occupancy by a tenant, or
- (b) impose, on an individual who is a member of any of those teams, a term or condition for the tenancy of a manufactured home site or rental unit if the term or condition discriminates

on the basis that the individual who is a member of the team intends to keep the dog that is a member of the team in the manufactured home site or rental unit.

The *Guide Dog and Service Dog Act* provides the following definitions relevant to tenancies:

"guide dog" means a dog that

- (a) is trained as a guide for a blind person, and
- (b) is certified as a guide dog;

"guide dog team" means a blind person and a guide dog that are certified as a guide dog team;

"service dog" means a dog that

- (a) is trained to perform specific tasks to assist a person with a disability, and
- (b) is certified as a service dog;

"service dog team" means a person with a disability and a service dog that are certified as a service dog team.

Accordingly, the *Guide Dog and Service Dog Act* requires guide dogs, guide dog teams, service dogs, and service dog teams to be certified.

The *Guide Dog and Service Dog Act* defines “certified” as being certified by the Registrar of Guide Dogs and Service Dogs under section 6. Section 6(1) of the *Guide Dog and Service Dog Act* states that:

6 (1)The registrar may issue or renew a certificate referred to in section 5 (1), in a form satisfactory to the registrar, if the registrar is satisfied that the individual or the dog, or both, as the case may be, identified in the certificate meet all of the conditions, qualifications and requirements imposed under this Act and the regulations.

Accordingly, the *Guide Dog and Service Dog Act* provides to tenancy protections to tenant with properly certified guide dogs and service dogs.

In this matter, the tenant acknowledged that her dog is not certified as a service dog in accordance with the *Guide Dog and Service Dog Act*. Accordingly, if find the protection of section 3 of the *Guide Dog and Service Dog Act* do not apply to this tenancy. As such, I dismiss the tenant’s application for an order for the landlord to comply with the Act and the tenant’s request for permission to keep the dog in the rental unit. However, the tenant is granted leave to reapply for an order keep her dog in the rental unit if her dog does become duly certified as a service dog pursuant to the *Guide Dog and Service Dog Act*.

Since the tenant’s application has not been successful, I dismiss the tenant’s application for reimbursement of the filing fee pursuant to section 72 of the *Act*.

Conclusion

I dismiss the tenant’s application. The tenant is granted leave to reapply for an order keep her dog in the rental unit if her dog does become duly certified as a service dog pursuant to the *Guide Dog and Service Dog Act*.

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: August 13, 2019

Residential Tenancy Branch