Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding CITY OF VANCOUVER and
[tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC
OPC FFL

Introduction
This hearing was reconvened after the issuance of a November 12, 2019 interim decision. I determined that the landlord's application could not be heard on the originally scheduled date of November 8, 2019 as the tenant had filed a cross application that was not scheduled to be heard at the same time, contrary to section 2.14 of the Residential Tenancy Branch Rules of Procedure.

This hearing dealt with the applications filed by both the landlord and the tenant pursuant to the *Residential Tenancy Act ("Act").*

- The tenant applied for an order to cancel an Order of Possession for Cause pursuant to section 47.
- The landlord appled for An Order of Possession for Cause pursuant to sections 47 and 55 and authorization to recover the filing fees from the tenant pursuant to section 72.

Both the landlord and the tenant attended the hearing. As both parties were in attendance, service of documents was confirmed. Both parties acknowledge receiving one another's Applications for Dispute Resolution and stated they had no issues with timely service of documents. Both parties were prepared to have the merits of their case heard.

Preliminary Issue
The landlord called into the teleconference hearing at the scheduled time of 11:00 a.m. however the tenant was late in calling in. The tenant had used a different access code and was provided with the proper access code by another arbitrator. When he called into this teleconference hearing at 11:06 a.m., I advised him that the landlord and I were

in the process of confirming whether both parties were aware of the proceedings. No evidence regarding the merits of the landlord's application were heard before 11:06 a.m.

Preliminary Issue

The tenant named the property manager as a respondent in his proceedings and the landlord named the city, the owner of the property, as the landlord in his proceedings. The parties agreed that the named landlord on the decision should reflect both the property manager and the city. Both names appear on the cover page of this decision.

Issue(s) to be Decided

Should the One Month Notice To End Tenancy for Cause be upheld or cancelled?
Can the landlord recover the filing fee paid for his application?

Background and Evidence

While I have turned my mind to all the documentary evidence, including photographs, diagrams, miscellaneous letters and e-mails, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of each of the parties' respective positions have been recorded and will be addressed in this decision.

A copy of the tenancy agreement was provided by the landlord. The tenancy began on March 15, 2019 with rent set at $375.00 per month payable on the first day of the month. A security deposit of $187.50 was collected from the tenant which the landlord continues to hold. The landlord testified the tenant did not have a dog when he moved in on March 15, 2019 and the tenant agreed to this fact.

The landlord points out there is a pet restriction on the tenancy agreement. He points to the following terms.

Part 5: PETS

Any term in this tenancy agreement that prohibits, or restricts the size of, a pet or that governs the tenant's obligations regarding the keeping of a pet on the residential property is subject to the rights and restrictions under the *Guide Dog and Service Dog Act.*

8. Pets

8.1 Pets are not permitted without the explicit written consent of the landlord.
The tenant must also complete the Pet Ownership Rules Addendum. In respect of permitted pets, the tenant must comply in all respects with the Pet Ownership Rules

Addendum, which forms part of this tenancy agreement (as applicable). The tenant is responsible for all damage caused by pets. The landlord has the right to withhold its consent in its sole discretion to refuse pets in the residential property, subject to Article 5 of the attached Residential Tenancy Agreement.

8.2 If the landlord permits the tenant to acquire a pet *during* the tenancy, the tenant will pay a pet damage deposit in an amount set by the landlord, but not to exceed one-half of the monthly rent payable for the rental unit when the pet is acquired, and all of the provisions of this Section 8 shall apply.

The landlord testified he has not consented to the tenant having a pet. He was not provided with an application by the tenant to have a pet. The landlord went on to say that on August 11, 2019 the staff noticed the tenant brought in a Husky dog. The staff advised the tenant that the dog was not allowed pursuant to the tenancy agreement, however the tenant told them it was a 'service dog'.

On August 22, 2019, a letter was sent to the tenant by the landlord's manager reminding the tenant of Part 5 of the tenancy agreement and section 18 of the Residential Tenancy *Act* which states:

Terms respecting pets and pet damage deposits

18 (1) A tenancy agreement may include terms or conditions doing either or both of the following:

(a) prohibiting pets, or restricting the size, kind or number of pets a tenant may keep on the residential property;

(b) governing a tenant's obligations in respect of keeping a pet on the residential property.

The landlord gave the tenant a letter on September 5, 2019 providing the tenant with his manager's phone number in case he wanted to speak to her. The tenant never called. On September 18, 2019 a final breach letter was provided to the tenant indicating if he doesn't remove the dog by September 28th, he is considered in breach of his tenancy agreement and they would serve him with a One Month Notice To End Tenancy for Cause. Copies of the letters were provided as evidence by the landlord.

The landlord served the tenant with a One Month Notice To End Tenancy for Cause on October 1, 2019 by posting it to the tenant's door. The tenant acknowledges receiving it on that day. The effective date of the Notice is November 30, 2019. The reason for ending the tenancy reads:

Break of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.

The landlord testified there are 2 cats and one other small dog living in the building, however those animals were pre-approved before coming in, whereas the tenant took in a dog without permission. Some of the staff working in the building are afraid of the tenant's dog.

The tenant provided the following testimony. He acknowledges that he has a dog living with him in his rental unit, however the dog is an emotional support animal (ESA) recommended by his family doctor. The tenant provided a note from his doctor to corroborate his need for the dog. The dog helps him to get out of the house when he has to take the dog out to do his business. The dog sleeps most of the time and doesn't harass anyone.

The tenant also provided a printout from a website that provides information about emotional support animals. According to the document provided, ESA's are not eligible to be certified as service dogs. It goes on to say that for a person to qualify for an ESA, he/she must be considered emotionally disabled by a licensed mental health professional. Typically, a medical doctor does not qualify because they are not a licensed medical health professional. The tenant is required to provide the landlord with a letter from the medical health professional stating the tenant is his/her patient, is under his/her care for the treatment of a medical disability; the disability substantially limits at last one major life activity and that the ESA is a necessary treatment for the tenant's mental health. The letter must be dated, written on the mental health professional's letterhead and provide the license type, number and province where the license is held.

The tenant argues that the landlord has arbitrarily restricted his ESA while others in the building have pets. The tenant testified he feels like he is being singled out for his dog. He points to section 8.2 of the addendum, stating it means that if a tenant acquires a pet, the landlord is entitled to ask for a deposit. He wasn't given a chance to be able to keep the ESA that he already acquired.

The tenant also testified that he obtained signatures from other residents in the building who are not opposed to his dog and provided the document as evidence. The dog sleeps most of the day and the other tenants in the building are happy to see him. The

tenant acknowledges the dog once lunged at one of the staff members because the dog misinterpreted the staff member's fear of dogs as threatening.

Analysis

Pet clauses are examined extensively in Residential Tenancy Policy Guideline PG-28.

When a landlord feels that a tenant is breaching a pets clause by having an animal on the premises, it is not uncommon for the landlord to give the tenant a written notice to get rid of the pet. If the tenant fails to do so within a reasonable time, the landlord might give the tenant a notice to end the tenancy claiming that the tenant has breached a material term of the tenancy agreement and failed to rectify the breach within a reasonable time after being given written notice to do so.

…

If a tenant chooses to dispute the landlord's notice to end the tenancy or opposes the landlord's application to comply, the matter will come before an arbitrator who will determine, in the case of a notice to end the tenancy, whether the pets clause in the tenancy agreement is a "material term" of the tenancy agreement. In the case of an application for an order that the tenant comply with the tenancy agreement, the arbitrator will determine whether the pets clause is an enforceable term of the tenancy agreement. In making that determination, an arbitrator will be governed by ***three factors****: that the term is not inconsistent with the Residential Tenancy Act, the Manufactured Home Park Tenancy Act, or their respective Regulations, that the term is not unconscionable, and that the term is expressed in a manner that clearly communicates the rights and obligations under it.*

1. Is the term inconsistent with the Residential Tenancy *Act*?

Section 18(1)(a) of the *Act* says that a tenancy agreement may include terms or conditions doing either or both of the following:

(a) prohibiting pets, or restricting the size, kind or number of pets a tenant may keep on the residential property;

(b) governing a tenant's obligations in respect of keeping a pet on the residential property.

I find that term 8.1 of the addendum to the tenancy agreement to be consistent with section 18(1)(a) of the *Act*. The term clearly states: *Pets are not permitted without the explicit written consent of the landlord… The landlord has the right to withhold its consent in its sole discretion to refuse pets in the residential property, subject to Article 5 of the attached Residential Tenancy Agreement.*

2. Is the term unconscionable?

To be an unconscionable term, the tenant must be able to show that the term is oppressive or grossly unfair. It must be so one-sided as to oppress or unfairly surprise the other party. To be unconscionable, the term must take advantage of the ignorance, need or distress of the weaker party.

The tenant argues that he needs the dog as an ESA, however he has not provided any indication of being emotionally disabled from a certified mental health professional. The tenant has not provided any evidence from a mental health professional that indicates he requires the animal as a necessary treatment for his mental health. Although he feels he is being 'singled out' for having the dog, I find this argument lacks credibility since he had the opportunity to seek the landlord's permission to obtain an animal before taking it in. Instead, the evidence shows the tenant got the dog then refused to part with it after the landlord discovered it. The term does not take advantage of the ignorance, need or distress of the party as the tenant signed the tenancy agreement then subsequently got the dog, knowing he was prohibited from doing so. I find the term is not unconscionable.

3. Is the term expressed in a manner that clearly communicates the rights and obligations under it?

Term 8.1 can be broken down into 4 lines

1. *Pets are not permitted without the explicit written consent of the landlord.*
2. *The tenant must also complete the Pet Ownership Rules Addendum.*
3. *In respect of permitted pets, the tenant must comply in all respects with the Pet Ownership Rules Addendum, which forms part of this tenancy agreement (as applicable).*
4. *The tenant is responsible for all damage caused by pets.*
5. *The landlord has the right to withhold its consent in its sole discretion to refuse pets in the residential property, subject to Article 5 of the attached Residential Tenancy Agreement.*

Lines 2, 3 and 4 of this term would have made better sense if they were made separate and distinct lines, not mixed in with lines 1 and 5 of this term of the tenancy agreement addendum. Despite this flaw, I find the rights and obligations of the parties are clearly communicated. Lines 1 and 5 plainly communicate the rights and obligations of the parties with respect to pets. <u>The tenant cannot have a pet unless the tenant has the written consent of the landlord and the landlord retains the right to refuse the pet</u>. There is nothing unclear or ambiguous about this term.

I find term 8.1 of the addendum to the tenancy agreement is an enforceable term. Given the extent of the landlord's determination to have the tenant remove the dog and the tenant's refusal to do so, I find this term is a material term of the tenancy.

The landlord provided written warnings to the tenant to remove the dog on August 22 and September 18th. The tenant was advised that the landlord considered this to be a material term of the tenancy and the tenant could face an eviction for the breach. I find the tenant breached a material term of the tenancy by breaching term 8.1 of the addendum to the tenancy agreement and I uphold the landlord's One Month Notice To End Tenancy for Cause.

The effective date on the landlord's Notice is November 30, 2019. I grant an Order of Possession to the landlord effective November 30, 2019 at 1:00 p.m.

As the landlord's application was successful, the landlord is also entitled to recovery of the $100.00 filing fee for the cost of this application. The landlord continues to hold the tenant's security deposit in the amount of $187.00. In accordance with the offsetting provisions of section 72 of the Act, I order the landlord to retain $100.00 of the tenant's security deposit in full satisfaction of the monetary order.

Conclusion

I grant an Order of Possession to the landlord effective November 30, 2019 at 1:00 p.m. Should the tenants or anyone on the premises fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

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 29, 2019

Residential Tenancy Branch