



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **CNC, OLC, RR, RP**

Introduction

This hearing dealt with an application by the tenant under the *Residential Tenancy Act* (the *Act*) for the following:

- An order requiring the landlord to carry out repairs pursuant to section 32;
- Cancellation of One Month Notice to End Tenancy for Cause (“One Month Notice”) pursuant to section 47;
- An order requiring the landlord to comply with the Act pursuant to section 62;
- An order to reduce the rent for repairs, services or facilities agreed upon but not provided pursuant to section 65;

The tenant attended with MT, a support person (“the tenant”). The tenant called JW as a witness who provided affirmed testimony. Agents for the landlord attended, namely SD, DD and EL (“the landlord”). All parties had opportunity to provide affirmed testimony, present evidence and make submissions. No issues of service were raised. The hearing process was explained.

Procedural Issue

The tenant’s application included unrelated claims in addition to the tenant’s application to dispute the landlord’s One Month Notice.

Rule 2.3 of the Residential Tenancy Branch Rules of Procedure states that claims made in the application must be related to each other. Arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply.

I find that the tenant's primary application pertains to disputing a notice to end tenancy. I find that the additional claims are not related to whether the tenancy continues. Therefore, all the tenant's claims except for the applications to dispute the landlord's One Month Notice are dismissed, and I grant the tenant liberty to reapply.

Issue(s) to be Decided

Is the tenant entitled to an Order cancelling the One Month Notice? Is the landlord entitled to an Order of Possession?

Background and Evidence

In this application, the tenant claimed that his dog is a "service dog". The landlord asserted that the presence of the dog in the unit was a breach of a material term of the tenancy agreement. SD and DD provided evidence on behalf of the landlord which contrasted with the evidence provided by the tenant and JW. Not all the testimony and documentary evidence is referenced in my Decision. Only key, relevant facts are referred to.

Background and No Pets Clause

The parties agreed the tenancy began on October 1, 2019. Monthly rent is \$1,500.00. At the beginning of the tenancy, the tenant provided a security deposit of \$737.50 which the landlord holds. There are 33 units in the building.

A copy of the tenancy agreement was submitted. Paragraph 17 is headed "Pets" and states as follows (with emphasis added):

It is a material term of the Agreement, that, without the landlord's prior written consent, the tenant may not keep or allow on the residential property any animal including a dog, cat, snake, bird, reptile, or exotic animal, domestic or wild, fur bearing or otherwise.

If the tenant has written permission from the landlord, the tenant must ensure the pet does not disturb or interfere with any person on the residential property or neighbouring properties or cause any damage to the rental unit or residential property.

Should the pet cause any such damage, the tenant will be responsible for any resultant costs to the landlord of repairing the damage, compensating any person, and recovering legal or other expenses. **If the tenant fails to correct a violation of this clause, including permanently removing a pet from the residential property after receiving notice from the landlord to correct the violation, the landlord may end the tenancy.**

This clause is referred to as the “no-pets clause”.

Above the signatures of the parties on the tenancy agreement also appears the words:

No Parties & No Pets

The parties signed a separate document on September 17, 2019 titled “Rules & Regulations for Incoming Tenants”. This is a 4-page document covering many subjects such as noise and guests. In a section titled “Pets”, the document states as follows (in part and emphasis added):

*You are not allowed to have a pet unless your pet has been approved in writing by the manager and you have signed a “pet Agreement”. **Pets are approved on a case by case basis**, please see me for this.*

The tenant acquired a puppy in September 2020 which was 7 months old at the time of the hearing.

One Month Notice

The landlord issued a warning letter to the tenant on September 11, 2020 which stated that the tenant was in breach of a material term of the tenancy by having the dog. The Notice provided the tenant had until September 25, 2020 to correct the violation or the landlord would proceed to evict the tenant. The tenant acknowledged receipt of the warning. The tenant continued to have the dog.

The landlord issued a One Month Notice to the tenant dated September 26, 2020, effective October 30, 2020, stating as the only ground that the tenant was in breach of a material term of the tenancy by having the dog. The tenant acknowledged service of the Notice which was in the standard RTB form. The tenant applied to dispute the Notice within the allowed time.

The key elements of the tenant's testimony are as follows:

1. The tenant is a person with disabilities as a result of events which occurred ten years ago; the tenant has persistent, serious medical issues including a head injury; the tenant submitted a supporting letter from his doctor dated October 30, 2020 as well as government correspondence confirming he is a disabled person;
2. The tenant's doctor suggested the tenant get a support dog; a letter from the doctor to this effect was submitted as evidence stating the tenant "requires" a service animal;
3. The tenant had life-threatening medical issues in August 2020 and was in a coma for many days;
4. The dog is "medically necessary" and helps the tenant "live better";
5. The tenant did not request permission from the landlord to have a dog as he believed it was not necessary;
6. The tenant testified that his medical condition called for a service dog who would in the future be able to perform certain services with the potential of saving the tenant's health or life;
7. The tenant obtained a mixed breed puppy "from a friend who had a litter" and is in the process of training the dog to be a service dog;
8. The dog will be 90 pounds at maturity which is the required weight for a service animal for the tenant's weight and medical condition;
9. In his written submissions, the tenant stated (in part):

In September 2020, my family physician strongly urged me to acquire a service dog to help me with my recovery and prevent a relapse. I contacted Service Dog Canada to inquire about acquiring a service dog. They stated that it can take several years, and tens of thousands of dollars, to acquire a service dog....

Service Dog Canada suggested I acquire a puppy, and with the assistance of a professional dog trainer, train my own service dog.... So we did just that.

[After I acquired the dog, the landlord stated] I am not permitted to have a pet reside in my apartment. I was slightly shocked, as at least 6 apartments in our building have a pet or pets, [the landlord] included.

10. The tenant is assisted by LW and RS in training the dog both of whom are experienced in such training as stated in their supportive letters, copies of which were submitted;
11. The trainer LW submitted a letter stating that he was experienced in training service dogs and was assisting the tenant with the training regimen which was described in detail; LW described the dog as having “a personality that is very suitable to service dog work... he has shown a great ability to be calm, to watch his surroundings, while still being attentive to his handler”;
12. The tenant acknowledged the dog is not a certified service dog under provincial legislation;
13. After the landlord issued the Notice, the tenant polled most of the occupants of the building’s apartments; no one who was polled had an objection to the tenant’s dog; a copy of the poll with attendant individual signatures was submitted;
14. The tenant submitted pictures of him training the dog who wore a dog vest labelled “Service in Training”;
15. The tenant testified he did not expect the objections of the landlord and was not aware of the City licensing requirements for a dog; he acknowledged training the dog in the building’s garage on one occasion when the dog was not on a leash; Animal Control attended, and the tenant registered the dog with the municipality right away;
16. Many of the tenants in the building have dogs; there are dogs and/or cats on each floor of the building;
17. In his written submissions, the tenant stated (emphasis added):

Several other tenants including [landlord] have pets. *Some have more than one, and younger than my Service Dog in training. They say that these pet owners have been grandfathered yet this building has only been operational for the last 7 or so years. The property next to us is also owned by [landlord] and both managed by [landlord’s agent SD and DD]. The tenants from the other building have the same rules as [tenant’s building] and have also been given special allowances to have a dog or a cat. Many of these tenants have “special allowances” and yet have been in their units 6 months more than myself, and some 6 months less than me.*

18. A letter from DB was submitted; DB lives in the unit below the tenant and had not been disturbed by the dog who was described as “obedient and seemingly gentle”;
19. The landlord’s agents SD and DD, who live in one unit, have a dog; SD told the tenant that the building was “pet friendly at the discretion of the managers”;
20. The landlord objects primarily to the perception of the dog’s mixed breed.

The tenant called as a witness JW who testified that she has considerable experience with training dogs and is in a close relationship with the tenant. She testified she has several children in her household who have interacted with the dog. The dog is gentle and obedient. Pictures were submitted of the children interacting with and hugging the dog. She stated she believed the dog was a wonderful companion and potential service dog for the tenant.

The tenant referenced the provisions of the BC legislation, the *Guide Dog and Service Dog Act* [SBC 2015] Chapter 17. He submitted a copy of an email from the Government of BC regarding the Act dated September 28, 2020. The email stated in part as follows:

In an attempt to strike a balance that ensures public access while providing clarity to business owner, the Service Dog Act (GDSDA) provides for a voluntary certification process.

...

Please note that valid guide and service dog teams exist outside of the GDSDA certification process. Service providers should not refuse service to someone who identifies that they have a disability merely because the person’s guide or service dog is not certified under the GDSDA or is not wearing a vest or other visible identifier.

The tenant referenced the provision of BC *Human Rights Code*. He asserted that the no-pet clause does not apply to him as a person with a disability and it would be discriminatory to do so. The tenant maintained that, as a person with a disability who relies on an animal in connection with their disability, he has a legal right to have his needs accommodated. The landlord must provide reasonable accommodation to the tenant. It makes no difference that the dog is not certified. The tenant stated that the key factor is that depriving the tenant of the support animal would have a negative, disability-related impact on him. This does not cause the landlord any undue hardship considering the dog is well-mannered with a mild, likeable temperament and there are no complaints from anyone in the building about the dog except for the landlord’s

agents. The tenant requested that the landlord be required to accommodate his needs and asked that the Notice be dismissed without leave to reapply.

The key elements of the landlord's testimony are as follows:

1. There are several dogs in the building that have either been "grandfathered" in from the time before the agents assumed management of the property or were approved;
2. The landlord objected to the tenant's dog as soon as they knew he had one;
3. From the beginning, the dog "was getting scarier every week" and the tenant does not look like he is in control of the dog;
4. In their written submissions, the landlord stated in part as follows (as written):

[In one screenshot] the Dog is running wildly and unleash in our building parking lot; [see] another screenshot when you can see the Tenant kicking his dog, we guessed that was to teach him something. [We] are not specialists but it does not seem to be a good way to train a dog especially if you are in a service/therapy dog training program.

5. On November 2, 2020 the dog was "running unleash" in the parking lot and the landlord called the City Animal Control who attended; the dog was not registered or licensed with the city;
6. As "responsible managers", the agents SD and DD conducted research and found that LW, who provided a letter of support for the tenant, was not a certified dog trainer;
7. The dog is a mixed breed and the landlord suspects "pit bull" background which is banned in some countries; the landlord submitted several photographs of other dogs of this breed and pointed out similarities with the tenant's dog;
8. The landlord quoted from online sites to the effect that the dog of this type is difficult to train and "will become obnoxious and potentially vicious";
9. The landlord's agents are "scared of the dog"; the dog has "jumped "at the female agent once and growled at her;
10. The landlord acknowledged there were several dogs in the building and stated, "they are small dogs and cannot kill someone if it becomes uncontrolled";.

The landlord requested an Order of Possession pursuant to the One Month Notice.

Analysis

Not all the arguments and evidence submitted by the parties is referenced in my Decision. Only key facts relevant to my findings are discussed.

In assessing the weight of the testimony and evidence, I found the tenant credible, well-prepared and sincere. He was persuasive, calm and forthright. The tenant acknowledged errors which he attributed to his disability, such as not getting the dog registered with the City in a timely manner.

I find the tenant was sincere in his goal to train the dog to be a service dog capable of helping him in the event of medical distress. I accept his testimony, supported by witness statements and testimony, that he finds the dog obedient and well-mannered.

Breach of a material term

Section 47(1) of the Act allows a landlord to end a tenancy for cause for any of the reasons cited in the section. A party may end a tenancy for the breach of a material term of the tenancy. Section 47(h) of the Act states as follows:

Landlord's notice: cause

47(1) *A landlord may end a tenancy by giving notice to end the tenancy if one or more of the following applies:*

[...]

(h) the tenant

(i) has failed to comply with a material term, and

(ii) has not corrected the situation within a reasonable time after the landlord gives written notice to do so;

As noted in *RTB Policy Guideline #8 – Unconscionable and Material Terms*, 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.

To determine the materiality of a term, an Arbitrator will focus upon the importance of the term in the overall scheme of the Agreement. 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.

The question of whether 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 Agreement in question. The same term may be material in one agreement and not material in another. Applications are decided on a case-by-case basis. The Arbitrator will look at the true intention of the parties in determining whether the clause is material.

Simply because the parties have stated in the agreement that one or more terms are material, is not decisive.

The party claiming a breach of a material term must establish that the breach makes it impossible for the tenancy to continue.

Policy Guideline #8 reads in part as follows:

To end a tenancy agreement for breach of a material term the party alleging a breach...must inform the other party in writing:

- *that there is a problem;*
- *that they believe the problem is a breach of a material term of the tenancy agreement;*
- *that the problem must be fixed by a deadline included in the letter, and that the deadline be reasonable; and*
- *that if the problem is not fixed by the deadline, the party will end the tenancy...*

I find that the no-pets policy is **not** so important that the most trivial breach of that term gives the other party the right to end the Agreement.

In reaching this conclusion, I have considered the tenancy agreement and the landlord's rules. I find the Agreement is clear that there is a "no-pets policy". However, I find that this policy was weakened by the "Rules & Regulations for Incoming Tenants"; in this document, it is stated that the tenants in the building **were** allowed to have a pet as long as the landlord approved "on a case by case basis". I find the landlord's effort to enforce the no-pets policy in this case is not based on a customary standard but on a dislike for this particular dog. I have considered that there are many dogs in the building.

I therefore find that the no-pets clause is not a material term of the tenancy. I conclude the tenant is not in breach of a material term of the tenancy. I find the pet policy as practised by the landlord was flexible and permissive. I find the landlord has failed to establish that any tenant has been denied permission to have a dog or even sought

such permission in the first place. I find the landlord has failed to establish that the no-pets policy is enforced or that it exists except in name only.

Based on the number of dogs in the building, I accept the tenant's testimony that he thought he was permitted to have a dog and did not believe there was any need to seek the landlord's consent. I find the tenant did not act in defiance of any policy by getting a dog as no such policy was obviously enforced.

As this was the only ground for the issuance of the Notice, I grant the tenant's application to dismiss the Notice. As the Notice has been dismissed, I direct that the tenancy shall continue until it is ended in accordance with the agreement and the Act.

Conclusion

The One Month Notice to End Tenancy is dismissed. The tenant's application is successful, and the tenancy shall continue until it is ended in accordance with the agreement and the 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: December 18, 2020

Residential Tenancy Branch