



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding CHMA
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC

Introduction

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

- cancellation of the landlord's 1 Month Notice to End Tenancy for Cause (the 1 Month Notice) pursuant to section 47.

Both parties attended the hearing via conference call and provided affirmed testimony.

At the outset, the landlord's agent clarified that the landlord's name is CMHA, not CHMA. The tenant confirmed this in her direct testimony as an error on her part. As such, both parties consented to the Arbitrator amending the tenant's application naming the landlord from CHMA to CMHA.

Both parties confirmed the tenant served the landlord with the notice of hearing package via Canada Post Registered Mail. Both parties also confirmed the tenant served the landlord with the submitted documentary evidence in person on February 8, 2021. Both parties confirmed the landlord served the tenant with their submitted documentary evidence posted to the rental unit door on February 5, 2021. I accept the undisputed evidence of both parties and find pursuant to sections 88 and 89 of the Act that both parties have been sufficiently served.

Issue(s) to be Decided

Is the tenant entitled to an order cancelling a 1 month notice?

Background and Evidence

While I have turned my mind to all the documentary evidence, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of the applicant's claim and my findings are set out below.

This tenancy began on October 1, 2013 on a month-to-month basis as per the submitted copy of the signed tenancy agreement dated October 1, 2013. The monthly rent was \$561.00 payable on the 1st day of each month.

Both parties confirmed that on November 23, 2020, the landlord served the tenant with the 1 Month Notice dated November 23, 2020 by posting it to the rental unit door. The 1 Month Notice sets out an effective end of tenancy date of December 31, 2020 and that it was being given as:

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

The details of cause states:

*This is follow up to a warning letter sent out on September 17th in regards to having a dog (not registered service animal) living in the unit when no dogs are allowed in the unit and the tenant failed to properly inform the landlord about getting a dog or pay a pet damage deposit. **This 1 month letter to end tenancy is because of the dog continuing to be in the unit even when it is over a month later and thus she has been given a reasonable amount of time to rectify the situation and she has not done so.***

[reproduced as written]

The landlord stated that the tenant has a dog (not a registered service animal) living in the unit when no dogs are allowed in the unit as part of the tenancy agreement. The landlord referred to a letter dated September 17, 2020 titled, "Warning letter" to the named tenant. It states in part,

As a tenant with a rental agreement with Canadian Mental Health Association, this is to notify you that you are in breach of the tenancy agreement for the following reason(s)...

You have allowed a visitor to bring an animal on to the property. Visitors are not to bring animals on the property. This includes animals in cages or on leashes...

...You are requested to remedy the above infraction(s) as soon as possible. Failure to do so will result in further action being taken.
[reproduced as written]

Also found attached to this file is a letter addressed to the tenant from the landlord's agent, W.W. It states in part,

It has come to our attention that you still have at least one dog living with you. CMHA policy dictates that only registered service dogs (eg, registered with PADS and has identification, vest etc) are allowed in our units. Therapy and emotional support animals are not recognized by CMHA at this time and are not allowed. Please get rid of the dog(s) by September 30th or we will have to take escalating action.
[reproduced as written]

The landlord also referenced clause #22 Pets of the signed tenancy agreement dated October 1, 2013 which states,

- (a) Any term in this tenancy agreement which 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 Animal Act.
- (b) **The tenant may keep pets in the rental unit** and on the residential property only in accordance with **the pet ownership rules** included in the rules and regulations delivered with this tenancy agreement, as may be amended from time to time.

[reproduced as written]

In this case, both parties agreed that the Guide Animal Act referred to in the signed tenancy agreement has now been replaced by the BC Guide Dog and Service Dog Act. The landlord also stated that no amendments have been made to the tenant's tenancy agreement regarding pets.

The landlord stated that the tenant's dog is not certified under the BC Guide Dog and Service Dog Act and must be trained and public service tested from an accredited

school. The landlord did not submit a copy of the BC Guide Dog and Service Dog Act. The tenant argued that Human rights laws protect people with disabilities who rely on guide and service dogs even if the dog is not certified under the BC Guide Dog and Service Dog Act. The tenant repeatedly cited “The Human Rights Code and other laws” section on page 1 of a 2 page information sheet titled, “Protections for people with disabilities who require a guide or service dog: What you need to know”.

The tenant has confirmed in her affirmed testimony that she does have a dog; she did receive a letter from the landlord on September 17 warning her to remove the dog. The tenant stated that the landlord’s agent, E.M. gave her verbal authorization to have a service animal (the dog).

The landlord’s agent, E.M. disputed the tenant’s claim stating that although the tenant is entitled to have a service dog, the service animal must receive training and pass a public service test from an accredited school in order to be accepted by the landlord.

Analysis

In an application to cancel a 1 Month Notice, the landlord has the onus of proving on a balance of probabilities that at least one of the reasons set out in the notice is met.

In this case, both parties confirmed that the landlord served the tenant with the 1 month notice to end tenancy dated November 23, 2020. Both parties acknowledged that they understood that the issue at hand was that the tenant was in possession of a service dog living in the rental unit. The landlord has claimed that the tenant is in Breach of a Material Term of the Tenancy Agreement as the service animal must be certified under the Guide Animal Act/ BC Guide Dog and Service Dog Act. The landlord clarified in her direct testimony that certification of the service animal must receive training and complete a public service test by an accredited school.

As stated above the signed tenancy agreement clause #22 (b) referred to by the landlord states in part,

- (c) **The tenant may keep pets in the rental unit** and on the residential property only in accordance with **the pet ownership rules** included in the rules and regulations delivered with this tenancy agreement, as may be amended from time to time.

The landlord's agent, E.M. also stated that there have been no amendments to the signed tenancy agreement regarding pets.

In this case, I find that the landlord has failed to provide sufficient evidence that the tenant is in breach of a material term of the tenancy. Clause #22 referred to by the landlord specifically states that **the tenant may keep pets in the rental unit subject to pet ownership rules** as per the rules and regulations of the signed tenancy agreement. The landlord confirmed that no amendments have been made to the tenant's signed tenancy agreement nor has the landlord made reference to any other rules or regulations regarding pets. I also refer to the landlord's letter dated September 17th which states in part,

You have allowed a visitor to bring an animal on to the property. Visitors are not to bring animals on the property. This includes animals in cages or on leashes...

I find that the landlord's message was miscommunicated to the tenant and instead refers to an animal visitor and not an animal kept by the tenant. The did not provide any evidence regarding any pet rules or regulations. The signed tenancy agreement allows the tenant to keep pets in the rental unit. On this basis, the tenant's application is granted. The 1 month notice dated November 23, 2020 is set aside and the tenancy shall continue.

Conclusion

The tenant's application is granted.

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: March 1, 2021

Residential Tenancy Branch