



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Coast Foundation Society (1974) doing business as Coast Mental Health and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC

Introduction

This hearing dealt with a tenant's application to cancel a One Month Notice to End Tenancy for Cause ("1 Month Notice") dated December 16, 2020.

Both parties appeared or were represented at the hearing and had the opportunity to make relevant submissions and to respond to the submissions of the other party pursuant to the Rules of Procedure.

Preliminary and procedural matters

At the outset of the hearing, I confirmed the landlord received the tenant's proceeding package by mail on January 13, 2021 and the tenant's evidence package by courier on March 16, 2021. I confirmed the tenant received the landlord's evidence package on or about March 9, 2021. Although courier is not a permissible method of serving documents under the Act, considering the landlord received the tenant's evidence package and had no objection to the admittance of it, I deemed the landlord sufficiently served with the tenant's evidence, as I am authorized to do under section 71 of the Act, and I admitted the evidence of both parties for consideration in making this decision.

The tenant was accompanied by an individual that he described as being a witness as to the character and nature of his dog. The tenant was instructed to have his witness leave the area so that she could not hear the proceeding until called to testify. The tenant assured me his witness was outside of the van here he was located; however, during the hearing I heard the witness talking to the tenant. In any event, the character and nature of the tenant's dog was not an issue for me to determine in this hearing so it was unnecessary to hear from the witness.

The parties had participated in a previous dispute resolution proceeding before me on October 30, 2020 (“previous dispute resolution proceeding”) and I have recorded the file number associated to that proceeding on the cover page of this decision.

As found in the previous dispute resolution proceeding decision, the *Residential Tenancy Act* applies to the subject living accommodation despite the statement in the Program Agreement that the Act does not apply.

The tenant had identified the landlord as being the individual rather than the organization identified as being the landlord on the 1 Month Notice and the Program Agreement. The parties were in agreement to amend the style of cause to reflect the landlord as identified on the 1 Month Notice and the Program Agreement and I have amended the application accordingly.

The 1 Month Notice before me was signed by the landlord on December 16, 2020; however, I heard it was served on December 21, 2020. The tenant filed to dispute the 1 Month Notice on December 29, 2020. As such, I am satisfied the tenant filed to dispute the 1 Month Notice within the 10 day time limit for doing so.

Issue(s) to be Decided

- Should the 1 Month Notice dated December 16, 2020 be upheld or cancelled?
- Is the landlord entitled to an Order of Possession?

Background and Evidence

The tenancy started on August 20, 2019 on a month to month basis. The tenant is required to pay rent of \$375.00 on the first day of every month. The rental unit is located in a multiple unit building where the landlord provides housing to individuals with mental health and addiction issues.

On October 30, 2020 the parties participated in a dispute resolution proceeding to deal with the tenant’s application to cancel a 1 Month Notice dated August 28, 2020 (“previous 1 Month Notice”). The 1 Month Notice dated August 28, 2020 was cancelled; however, four orders were issued to the tenant during the hearing of October 30, 2020 and an additional order was given in the written decision of November 4, 2020. Below, I reproduce the orders issued to the tenant under the previous dispute resolution proceeding:

I ORDER the TENANT to:

- 1. Keep his dog "Cleo" muzzled at ALL TIMES when the dog is outside of the rental unit, effective IMMEDIATELY.***
- 2. Keep his dog "Cleo" on a leash at ALL TIMES when the dog is outside of the rental unit and at ALL TIMES maintain a secure hold of the leash, effective IMMEDIATELY.***
- 3. Keep his dog "Cleo" muzzled at ANY TIME the landlord's agents, contractors, employees, or the like, enter the rental unit. The landlord is expected to give the tenant advance notice of entry so that the tenant may comply with this order.***
- 4. Obtain an aggressive dog license from the City WITHIN TWO WEEKS and give a copy of the license to the landlord to demonstrate compliance with this order and the tenant must continue to maintain/renew the license when the license expires so long as the tenant keeps the dog "Cleo" at the rental unit.***

By way of the written decision a fifth order was imposed upon the tenant, as follows:

- 5. As stipulated in the email from the City, display signage indicating there is a dangerous dog in the premises. I order the signage to be displayed on or beside the entry door to the rental unit and this is to be accomplished EFFECTIVE IMMEDIATELY upon receipt of this decision.***

The decision of November 4, 2020 further provides as follows:

The first four orders above were given orally during the hearing. The fifth order was not and it must be fulfilled immediately upon the tenant receiving this decision."

The tenant was also informed during the hearing, and I state again in this decision, that the health and safety of other occupants and the landlord, and their possessions, including pets, is paramount and that a single infraction of any of my orders above will be grounds for the landlord to issue another 1 Month Notice to End Tenancy for Cause citing the following reason for ending the tenancy:

☐ Non-compliance with an order under the legislation within 30 days after the tenant received the order or the date in the order.

On December 16, 2020 the landlord's agent issued the 1 Month Notice that is before me for this proceeding. The landlord's agents testified the 1 Month Notice was served to the tenant, in person, on December 21, 2020. The tenant testified that he found it posted to the wall outside his rental unit and he does not recall the date he found it. I found it unnecessary to further explore the method of service and the date the tenant found the 1 Month Notice as I was satisfied that in making his Application for Dispute Resolution on December 29, 2020 the tenant had filed to dispute the notice within the time limit for doing so regardless of the method of service or the date he found the 1 Month Notice.

The 1 Month Notice dated December 16, 2020 has a stated effective date of January 31, 2021 and indicates the following reason for ending the tenancy, on page 2 of the notice:

☒ Non-compliance with an order under the legislation within 30 days after the tenant received the order or the date in the order.

In the Details of Cause section of the 1 Month Notice dated December 16, 2020, on page 3 of the notice, the landlord wrote:

Details of Causes(s): Describe what, where and who caused the issue and include dates/times, names etc. This information is required. An arbitrator may cancel the notice if details are not provided.

Details of the Event(s):

As per the arbitrator's decision made on November 4, 2020, the tenant was ordered to keep their dog muzzled at all times on the property, leash the dog at all times on the property, obtain an aggressive dog license within 2 weeks of the decision, and put up signage indicating there is a dangerous dog in the premises. The tenant has failed to comply with these orders and is therefor receiving this notice to end tenancy due to non-compliance with an order under the legislation within 2 weeks of receipt of the order.

In filing to dispute the 1 Month Notice, the tenant wrote:

"I'm being evicted due to not displaying an aggressive dog sign on apartment door and not purchasing an aggressive dog tag. The reason is I was shocked at the price \$500. I have a pro bono law student to have the aggressive dog declaration removed."

Landlord's position

During the hearing, the landlord's agent submitted that on November 20, 2020 the tenant's dog was in the common areas of the property without a muzzle. The lack of a muzzle on November 20, 2020 was also described in a list of incidents the landlord provided in its evidence package.

The landlord's agent also submitted that the tenant did not provide the landlord with proof he obtained the aggressive dog license as ordered and the tenant's evidence regarding the dog license shows the license fees are "outstanding".

The landlord's agents also submitted there were other violations of the orders issued to the tenant in the previous dispute resolution proceeding; however, those alleged violations post dated issuance of the 1 Month Notice and I did not consider those violations further for purposes of determining whether the landlord had a basis for issuing the 1 Month Notice of December 16, 2020.

Tenant's position

The tenant acknowledged that he walked his dog through the residential property without a muzzle on November 20, 2020. The tenant explained it was because the dog's muzzle had ripped and he had notified the front office staff that he was going to lead his dog through the building without a muzzle before doing so. The tenant stated that the front desk staff said "ok" in response to his notification. The tenant testified that on that date he proceeded to take his dog to get a new muzzle and when he returned to the property the dog was wearing a muzzle.

The tenant acknowledged that he has not obtained the aggressive dog license; however, the tenant was of the position he "tried" to get it. Upon further exploration of his efforts to try to get the license, the tenant stated that in the two weeks following the October 30, 2020 hearing he contacted his lawyer/law student in an attempt to get the aggressive dog designation overturned but that he experienced delays in getting results from his lawyer/law student.

The tenant acknowledged that he did not contact or attend City Hall in an attempt to acquire the aggressive dog license or if he could make payments toward the license fee. Rather, he received the "2021 dog license – renewal notice" ("renewal notice") dated November 23, 2020 after the City mailed it to him. Upon receiving the renewal

notice he discovered that he would have to pay nearly \$500.00 for the 2020 license fee that was still outstanding and the upcoming 2021 license fee and he does not have that much money. The tenant stated he has saved approximately \$300.00 to be used toward getting a license.

The tenant repeatedly attempted to argue that his dog does not deserve the aggressive dog designation and that the designation was made based on one complaint that was without merit. The tenant was of the position that there is only one person residing at the residential property that has issues with his dog and he should not be evicted due to that one person's complaints.

Landlord's response

The landlord's agent doubted the front office staff was "ok" with the tenant walking his dog through the property without a muzzle on November 20, 2020 since they forwarded the incident to the agent for his attention.

The landlord's agent submitted that the landlord responsible for the safety of all occupants and staff at the property and the tenant's failure to comply with the orders issued to him by way of the previous dispute resulted in issuance of the 1 Month Notice of December 16, 2020. The landlord's agent stated the landlord has no other motivation to end the tenancy other than the concerns over the tenant's dog and the tenant's non-compliance with orders issued with the previous dispute resolution proceeding.

The landlord's agent stated the landlord is not willing to extend the time for the tenant to acquire the aggressive dog license; however, the landlord's agent stated that it would consider continuing or reinstating the tenancy if the tenant were to remove the dog from the premises. If not, the landlord requested an Order of Possession effective on March 31, 2021.

Tenant's final position

The tenant maintained that his dog is not aggressive, that the aggressive dog designation is without merit, that he is fighting to have the designation overturned, and that he is not going to re-home his dog. The tenant stated he would rather live outside with his dog that continue his tenancy without his dog.

Analysis

Upon consideration of everything before me, I provide the following findings and reasons.

The tenant's position that his dog is not aggressive and not deserving of an aggressive dog designation is not relevant for this proceeding. Rather, the tenant was given orders to comply with so long as the dog carries that designation, which it still does, and what is before me now is determining whether the tenant complied with my orders and whether the landlord had a basis for issuing the 1 Month Notice of December 16, 2020.

Section 47 of the Act permits a landlord to end a tenancy for cause. The reason for ending the tenancy, as stated on the 1 Month Notice dated December 16, 2020, is provided under section 47(1)(l) of the Act. Below, I have reproduced that portion of the Act:

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

(l) the tenant has not complied with an order of the director within 30 days of the later of the following dates:

- (i) the date the tenant receives the order;
- (ii) the date specified in the order for the tenant to comply with the order.

The tenant had been issued orders, orally, during the hearing of October 30, 2020 by me as the presiding Arbitrator. An additional order was issued by me by way of the written decision of November 4, 2020. The orders include deadlines for compliance. An Arbitrator is a delegated authority of the Director of the Residential Tenancy Branch and an order issued by an Arbitrator is an order of the Director.

The orders issued to the tenant by way of the previous dispute resolution proceeding were reproduced in the Background and Evidence section of this decision. Two of the orders issued with the previous dispute resolution proceeding were the subject of the landlord's position for ending the tenancy. The landlord pointed to order #1 which required the tenant to:

- 1. Keep his dog "Cleo" muzzled at ALL TIMES when the dog is outside of the rental unit, effective IMMEDIATELY.**

Order #1 was issued to the tenant orally during the hearing of October 30, 2020 and was effective immediately. In the decision of November 4, 2020, on page 7, it states:

“Before the hearing ended, I gave the parties my findings orally and I issued orders to the tenant orally. The tenant responded that he understood my orders and that he understood failure to comply with my orders will put the landlord in a position to end the tenancy regardless of whether he agrees with the “aggressive dog” designation placed on his dog by the SPCA.”

I find the order #1, issued on October 4, 2020, took effect when the hearing ended on October 30, 2020.

The landlord pointed to the tenant’s dog being in the common areas of the property on November 20, 2020 without a muzzle as being a violation of order #1. November 20, 2020 is well after the hearing of October 30, 2020 ended and the written decision was issued on November 4, 2020.

Although the landlord did not specify November 20, 2020 as the specific date for violating order #1 in the Details of Cause on the 1 Month Notice, the landlord did provide it in a written list of incidents involving the tenant and his dog that were included in the landlord’s evidence package served upon the tenant on March 9, 2021. As such, I am satisfied the tenant has had ample opportunity to prepare a response or defence to this allegation.

In response to the landlord’s allegation, the tenant acknowledged his dog was walked through the property without a muzzle on November 20, 2020. The tenant attempted to justify his decision to do so as being the result of a ripped muzzle and implying he was taking his dog to get a new muzzle. However, I find I am not persuaded that it was necessary or unavoidable to take the dog through the property to get a new muzzle. The tenant did not explain why he could not have purchased a new muzzle without the dog. If it is necessary to size the dog for a new muzzle the tenant could have taken the ripped muzzle with him or purchased more than one muzzle with the view to acquiring one that fit properly.

The other order that was purportedly violated was the order for the tenant to:

- 4. Obtain an aggressive dog license from the City WITHIN TWO WEEKS and give a copy of the license to the landlord to demonstrate compliance with**

this order and the tenant must continue to maintain/renew the license when the license expires so long as the tenant keeps the dog “Cleo” at the rental unit.

Order #4 was issued to the tenant during the hearing, orally, on October 30, 2020. As such, I find the tenant was required to obtain an aggressive dog license from the City no later than November 13, 2020.

It was undisputed that the tenant has not acquired an aggressive dog licence from the City within two weeks of the October 30, 2020 hearing or any other time.

From the renewal notice presented as evidence, I find the tenant would have been required to pay \$229.00 for the 2020 dog license had he acquired the license when he was so ordered. However, the tenant chose to spend his time and effort trying to dispute or get the aggressive dog designation overturned and admittedly, he did not make efforts to contact or attend City Hall to try to obtain the necessary license. As the tenant was cautioned during the hearing of October 30, 2020 the tenant needed to comply with my orders regardless as to whether he agrees with the aggressive dog designation.

In light of the above, I am of the view that the tenant had been given an opportunity to continue his tenancy and retain his dog so long as he complied with the orders issued under the previous dispute resolution proceeding; however, he has failed to comply for reasons provided above. As such, I find the landlord had a basis for issuing the 1 Month Notice of December 16, 2020. Therefore, I dismiss the tenant's application that I cancel the 1 Month Notice dated December 16, 2020.

Section 55(1) of the Act provides as follows:

55 (1) If a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, the director must grant to the landlord an order of possession of the rental unit if

- (a) the landlord's notice to end tenancy complies with section 52 *[form and content of notice to end tenancy]*, and
- (b) the director, during the dispute resolution proceeding, dismisses the tenant's application or upholds the landlord's notice.

In this case, I have dismissed the tenant's application to cancel the 1 Month Notice and upon review of the 1 Month Notice provided to me, I am satisfied that it meets the form and content requirements of section 52 of the Act. Accordingly, I find the criteria of section 55(1) have been met and the landlord is entitled to an Order of Possession.

The landlord had requested an Order of Possession effective on March 31, 2021; however, given the date of this decision, I provide the landlord with an Order of Possession effective seven (7) days after the tenant is served with the Order of Possession.

Conclusion

The tenant's application to cancel the 1 Month Notice dated December 16, 2020 is dismissed.

I provide the landlord with an Order of Possession effective seven (7) days after the Order of Possession is served upon the tenant.

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 31, 2021

Residential Tenancy Branch