



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding MAKOLA HOUSING SOCIETY
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPC, FFL

Introduction

On January 20, 2021, the Landlord applied for a Dispute Resolution proceeding seeking an Order of Possession based on a One Month Notice to End Tenancy for Cause (the "Notice") pursuant to Section 47 of the *Residential Tenancy Act* (the "*Act*") and seeking to recover the filing fee pursuant to Section 72 of the *Act*.

M.F. attended the hearing as an agent for the Landlord. The Tenant attended the hearing as well, with M.N. attending as an advocate for the Tenant.

At the outset of the hearing, I explained to the parties that as the hearing was a teleconference, none of the parties could see each other, so to ensure an efficient, respectful hearing, this would rely on each party taking a turn to have their say. As such, when one party is talking, I asked that the other party not interrupt or respond unless prompted by myself. Furthermore, if a party had an issue with what had been said, to please make a note of it and when it was their turn, they would have an opportunity to address these concerns. The parties were also advised that recording of the hearing was prohibited and they were reminded to refrain from doing so. All parties acknowledged these terms. As well, all parties in attendance provided a solemn affirmation.

M.F. advised that the Tenant was served the Notice of Hearing and evidence package by registered mail on January 22, 2021. The Tenant confirmed that this package was received. Based on this undisputed evidence, and in accordance with Sections 89 and 90 of the *Act*, I am satisfied that the Tenant was served with the Notice of Hearing and evidence package. As such, I have accepted the Landlord's evidence and will consider it when rendering this Decision.

The Tenant advised that there was no evidence submitted for consideration on this file.

All parties were given an opportunity to be heard, to present sworn testimony, and to make submissions. I have reviewed all oral submissions before me; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

- Is the Landlord entitled to an Order of Possession?
- Is the Landlord entitled to recover the filing fee?

Background and Evidence

While I have turned my mind to the accepted documentary evidence and the testimony of the parties, not all details of the respective submissions and/or arguments are reproduced here.

All parties agreed that the tenancy started on July 1, 2019, that rent was established at a subsidized amount of \$648.00 per month, and that it was due on the first day of each month. A security deposit of \$650.00 was also paid. A copy of the signed tenancy agreement was submitted as documentary evidence for consideration.

M.F. advised that the Notice was served to the Tenant by registered mail on November 13, 2020. The Tenant confirmed that she received the Notice “sometime between November and December.” The reason the Landlord served the Notice is because of a “Breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.”

She testified that the Tenant signed the tenancy agreement, which contains a no pets clause, unless one is permitted by the Landlord in writing. In addition, an addendum was provided to the Tenant should a pet be permitted; however, there are specific restrictions on the type and size of pets. She stated that the Tenant mentioned that she had a dog at the start of the tenancy; however, the Tenant was advised that her dog would not be permitted as it exceeded the allowable restrictions on acceptable pets. On October 4, 2019, a letter was sent to the Tenant informing her that it was determined that a dog was living in the rental unit contrary to the tenancy agreement. A copy of the

pet rules and other documents were provided to the Tenant to register the pet with the Landlord to ensure that it qualified under the restrictions outlined in the addendum. However, the Landlord received no response from the Tenant.

A second letter, dated May 13, 2020, was served to the Tenant as the dog was still not registered, as the dog appears to exceed the maximum allowable size, and because the dog had been defecating on the property and that it was not cleaned up. The Tenant was advised to re-home this pet prior to May 28, 2020 and to inform the Landlord when completed. However, the Landlord received no response to this letter.

On September 3, 2020, a third letter was served to the Tenant because the dog's feces was still not being cleaned up. Furthermore, complaints were made regarding the dog's aggressive nature. The Landlord's requests for proof that the dog was a Registered Guide or Service animal were also ignored. A pet registration package was included with this letter and the Tenant was issued a final warning. The Tenant did not respond to this letter.

Along with the Notice, the Tenant was served a final letter on November 13, 2020 advising the Tenant that the Notice was served because she failed to provide any documentation to the Landlord to prove that the dog was a Registered Guide or Service animal. Moreover, the Landlord was not able to conduct a routine inspection because of the dog's aggressive nature.

The Tenant confirmed that there is a dog in the rental unit and that she owned this animal prior to the tenancy commencing. She stated that she was advised by the Landlord that she could keep her dog if it was a registered support animal and she stated that this dog was registered prior to the tenancy beginning. She submitted that she provided these forms to the Landlord but was advised that they were not the correct documents. She could not provide any details about when she took these documents to the Landlord and she could not recall what the Landlord told her when she presented these documents.

She then stated that the Landlord wanted her dog to go through the specialized training to be certified as a Guide or Service animal. She acknowledged that specialized training was required for an animal to be certified as a Guide or Service animal and that she did not have the qualifications required to administer this specialized training to her dog. She claimed that the dog has been registered as an emotional support animal, but she did not provide any documentation to support this. Furthermore, she could not confirm if

an emotional support animal would qualify as an exception to the pet rules as an animal covered under the *Guide Dog and Service Dog Act*.

M.N. confirmed that the dog was a certified emotional support animal; however, she could not determine if this would qualify the dog as an animal covered under the *Guide Dog and Service Dog Act*.

M.F. advised that the Tenant never provided the Landlord with any documentation about the dog, and she never responded to the Landlord's letters requesting that the necessary documentation be provided to register the dog.

The Tenant stated that "maybe" she received the Landlord's letters requesting that documentation be provided about the dog. She confirmed that she did not respond to these warning letters at all.

Analysis

Upon consideration of the evidence before me, I have provided an outline of the following Sections of the *Act* that are applicable to this situation. My reasons for making this Decision are below.

With respect to the Notice served to the Tenant on November 13, 2020, I have reviewed this Notice to ensure that the Landlord has complied with the requirements as to the form and content of Section 52 of the *Act*. I find that this Notice meets all of the requirements of Section 52.

The undisputed evidence is that the Notice was served on November 13, 2020 by registered mail. As per Section 90 of the *Act*, the Notice would have been deemed received five days after it was mailed. According to Section 47(4) of the *Act*, the Tenant had 10 days to dispute this Notice, and Section 47(5) of the *Act* states that "*If a tenant who has received a notice under this section does not make an application for dispute resolution in accordance with subsection (4), the tenant is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and must vacate the rental unit by that date.*"

After being deemed to have received the Notice, the tenth day fell on Saturday November 28, 2020 and the undisputed evidence is that the Tenant did not make an Application to dispute this Notice by Monday November 30, 2020, or at any point

whatsoever. I find it important to note that the information with respect to the Tenant's right to dispute the Notice is provided on the third page of the Notice.

Ultimately, as the Tenant did not dispute the Notice and as there was no evidence provided corroborating that the Tenant had any extenuating circumstances that prevented her from disputing the Notice, I am satisfied that the Tenant is conclusively presumed to have accepted the Notice. However, I must still consider the validity of the reason the Notice was served.

I find it important to note that a Landlord may end a tenancy for cause pursuant to Section 47 of the *Act* if any of the reasons cited in the Notice are valid. Section 47 of the *Act* reads in part 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;

Furthermore, Policy Guideline # 8 outlines a material term as follows:

"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 during a dispute resolution hearing, the Residential Tenancy Branch will focus upon the importance of the term in the overall scheme of the tenancy agreement, as opposed to the consequences of the breach. It falls to the person relying on the term to present evidence and argument supporting the proposition that the term was a material term.

The question of whether or not a term is material is determined by the facts and circumstances surrounding the creation of the tenancy agreement in question. It is possible that the same term may be material in one agreement and not material in another. Simply because the parties have put in the agreement that one or more terms are material is not decisive. During a dispute resolution proceeding, the Residential Tenancy Branch will look at the true intention of the parties in determining whether or not the clause is material."

As well, this policy guideline states that “To end a tenancy agreement for breach of a material term the party alleging a breach – whether landlord or tenant – 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.”

With respect to the reason on the Notice of a breach of a material term, I find it important to note that the Policy Guideline states that “it is possible that the same term may be material in one agreement and not material in another.” I find that this means that determining what would be considered a material term is based on the fact pattern of each specific scenario and that it is up to the Arbitrator in each case to evaluate the evidence presented and make a determination on this matter. In reviewing the tenancy agreement, I am satisfied that there is a term in the tenancy agreement which states that pets are not allowed in the rental unit or on the property unless permitted by the Landlord, in writing. Furthermore, there is an addendum to the tenancy agreement which sets out limits for a pet, if allowed.

When reviewing the totality of the evidence before me, the consistent and undisputed evidence is that the Landlord served the Tenant with several warning letters regarding the Tenant’s dog and requested that she register the dog if she wanted to keep it in the rental unit. Additionally, documents were provided to the Tenant to register her dog as a Registered Guide or Service animal so that she may then be permitted to keep the pet in the rental unit, despite it not meeting the size limits for a dog. However, the Tenant did not respond to the Landlord’s letters or take any corresponding action.

I am satisfied that the Landlord informed the Tenant multiple times that there was a problem, that the problem must be fixed by a deadline included in the letter, and if the problem is not fixed by the deadline, the Landlord will end the tenancy. Furthermore, I am satisfied that the no pets clause in the tenancy agreement would be considered a material term necessary to protect the safety of the rental unit and the other occupants of the property.

While the Tenant did not specifically argue this point, I can reasonably infer that it is her belief that as her dog is an emotional support animal, that it would qualify as an animal

covered under the *Guide Dog and Service Dog Act*. However, she did not provide any evidence to support this. Furthermore, the Tenant confirmed that for an animal to qualify as a guide or service dog, it requires specialized training. While it is her belief that she trained her dog herself, as she acknowledged that she did not have any certifications required to train her dog as a guide or service animal, I am not satisfied that whatever training she provided to her dog would adequately qualify it to be considered an animal covered under the *Guide Dog and Service Dog Act*. As such, I do not find that this dog would be permitted to be kept in the rental unit under the *Guide Dog and Service Dog Act* as an exception to the no pets clause of the tenancy agreement.

As the consistent evidence is that the Tenant has a dog in the rental unit, without the Landlord's written consent, and as the dog does not qualify as an exception under the *Guide Dog and Service Dog Act*, I am satisfied that the Tenant's dog is in the rental unit contrary to the material term of the tenancy agreement and addendum. I find that there is a pattern of similar, continuous behaviour of the Tenant ignoring the Landlord's requests to deal with this non-compliance, and that she continued to breach this term after being warned in writing to rectify the situation. As well, I am not satisfied that this pattern of behaviour will not repeat itself should the tenancy continue.

Ultimately, I find that the Landlord has provided sufficient evidence to justify service of the Notice under the reason of a breach of a material term. As such, I find that the Landlord is entitled to an Order of Possession that takes effect at **1:00 PM on April 30, 2021** after service of this Order on the Tenant. The Landlord will be given a formal Order of Possession which must be served on the Tenant. If the Tenant does not vacate the rental unit after service of the Order, the Landlord may enforce this Order in the Supreme Court of British Columbia.

As the Landlord was successful in this claim, I find that the Landlord is entitled to recover the \$100.00 filing fee paid for this Application. Under the offsetting provisions of Section 72 of the *Act*, I allow the Landlord to retain a portion of the security deposit in satisfaction of this debt outstanding.

Conclusion

I grant an Order of Possession to the Landlord effective on **April 30, 2021 at 1:00 PM after service of this Order** on the Tenant. This Order must be served on the Tenant by the Landlord. Should the Tenant 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: April 18, 2021

Residential Tenancy Branch