Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **LRE, LAT, OLC, FFT**

Introduction

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

- an order requiring the landlord to comply with the Act, regulation or tenancy agreement pursuant to section 62;
- authorization to change the locks to the rental unit pursuant to section 70;
- an order to suspend or set conditions on the landlord's right to enter the rental unit pursuant to section 70; and
- authorization to recover the filing fee for this application from the landlord pursuant to section 72.

Both parties attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses. Building manager LD also attended the hearing on behalf of the landlord.

Preliminary Issue – Identity of the Landlord

The individual named on the application for dispute resolution ("**ES**") is the property manager for the residential property. She stated that her employer, the property management company FSR (full name on the cover of this decision), should be named as landlord. The tenant consented to amending the name of the landlord on the application from ES to FSR. As such, I order that ES be removed the landlord respondent on the application, and that FSR be added in her place.

Preliminary Issue – Locks and Access

At the outset of the hearing the tenant stated that he no longer required an order authorizing him to change the locks on the rental unit. As such, I dismiss this portion of the application.

Additionally, the tenant clarified that the order he was seeking with regards to the landlord's right to enter the rental unit was actually relating to how he could be served with documents.

The tenant testified that he was out of the country and would be so for approximately seven months. He testified that he does not want to be served by having notices taped to his door or mailed to the rental unit. Instead, he would prefer to be served by email.

ES stated that the landlord would agree to serve the tenant by email. Additionally, she agreed that the tenant can serve the landlord via email as well. Both provided email addresses to be used for service (listed on the cover of this decision). As such, pursuant to section 71 of the Act, I order that the parties may serve each other via email at the addresses listed on the cover of this decision. Additionally, by consent of the parties, I order that the landlord may not serve the tenant by posting on the door of the rental unit or by mail (registered or otherwise) to the rental unit until April 30, 2022.

Preliminary Issue – Service

Both parties raised issues relating to the timing of service of the other's documentary evidence. However, both parties stated that they had sufficient time to review the others' documents and were prepared to proceed with the hearing today. As such, I deem that all necessary documents have been served in accordance with the Act.

Issues to be Decided

Is the tenant entitled to:

1) an order that the landlord comply with the Act; and
2) recover the filing fee?

Background and Evidence

While I have considered the documentary evidence and the testimony of the parties, not all details of their submissions and arguments are reproduced here. The relevant and important aspects of the parties' claims and my findings are set out below.

The tenant and the prior owner of the building entered into a tenancy agreement starting June 1, 2015. The residential property was purchased by its current owner in 2018, who appointed the landlord to administer the property. Monthly rent is currently $1,048.57. At the start of the tenancy, the tenant paid the prior owner a security deposit of $450. The landlord holds this deposit in trust of the tenant.

The issue which I am to adjudicate is relatively narrow. The parties agree on the basic facts. The tenant owns a dog and had not paid a pet damage deposit. On May 3, 2021, the landlord sent a letter to the tenant stating:

> It has come to our knowledge that you have a pet residing in your suite without the written approval of the landlord. All pets are subject to approval by FirstService Residential on behalf of the Landlord.

> You must provide the building manager a signed copy of a completed pet agreement form and remit a cheque amounting to $511.00 for the pet damage deposit upon receipt of this letter.

The tenant signed the pet agreement form but added an annotation that his dog was a "service dog". He refused to provide a pet damage deposit. The tenant argued that the animal was a "service dog" and that, as such, a pet damage deposit is not permitted. The landlord argued that it was entitled to collect a pet damage deposit, as the tenant's dog did not meet the definition of "service dog" set out in the *Guide Dog and Service Dog Act*.

The tenant provided the following documents to the landlord which he argued prove his dog is a "service dog":

1. Medical Form Confirming Requirement for Guide Dog or Service Dog

Dated May 10, 2021. This is a standard form of the Ministry of Public Safety and Solicitor General. On it, a medical doctor agreed with the following question:

> Having reviewed the appropriate information about the patient's condition and the guidelines applied on the back of this form, does the patient, in your opinion, have a condition that requires a fully trained guide dog (for visual impairments) or fully trained service dog (for other conditions) to assist them in daily living?

2. Application for a Dog-In-Training Certificate or Renewal

Dated May 12, 2021. This is a standard form of the Ministry of Public Safety and Solicitor General. On this form, the tenant wrote under the field "Name of Assistance Dogs International or International Guide Dog Federation accredited school" "Medical Form Confirming Requirement for Guide Dog or Service Dog". The tenant certified that "The dog identified in the certificate is being or will be trained by a dog trainer on behalf of the accredited training school for the purpose of the dog becoming a guide or service dog."

The tenant did not provide any response from Ministry of Public Safety and Solicitor General his application for a Dog-In-Training Certificate. I am unsure if the application was granted.

3. EIDAP Premium Registration Form

The tenant did not testify what EIDAP is. On this form, the tenant identified the dog in question as a service dog. The tenant did not provide any response to the registration form he received from EIDAP.

4. Service Dog Full Access Card

A plastic, wallet-seized card which states the following on the back:

> Under the ADA, state and local governments, businesses, and non-profit organizations that service the public generally must allow service animals to accompany people with disabilities in all areas of the facility where the public is normally allowed to go. Service animals are defined as dogs that are individually trained to do work or perform task [sic] for people with disabilities.
>
> Refusal to provide access to individuals with disabilities is a violation of the American Disabilities Act of 1990 and is punishable by law.

The landlord testified that such cards can be purchased online without restriction.

The tenant testified that he has been training his dog as a “service dog” for 8 months, and submitted that, in Canada, a person can train a service dog themselves. He testified that since 2009 he has had service animals. He did not provide documentary corroboration for any of this testimony.

The landlord did not dispute that the tenant has a need for a service dog. Rather, it disputed that the animal in question is a service dog. The landlord argued that “service dog” is a term defined by the *Guide Dog and Service Dog Act*, and there are specific criteria an animal must meet before it can be considered a “service dog”. Among these is the requirement that the animal be certified by the registrar under that act or be deemed certified by virtue of the dog being a member of a service dog team (the other member being the person with a disability) and that the other member holds a valid identification card issued to the team by an accredited or recognized training school.

The landlord argued that the animal in question meets neither of these requirements, and as such cannot be considered a “service dog” for the purposes of the Act. Accordingly, it submitted, the animal in question must be treated as a pet for the purposes of the Act, and a pet damage deposit is required.

The tenant argued that, in Canada, anyone may train a service dog, and that the dogs do not need to be trained be a “training school”. He stated that there is a federal law which pertains to this but was unable to provide me with the name of the law. He suggested I research the issue myself.

I advised the parties that I can only consider the material that is presented to me at the hearing, and that, without being provided the name of the applicable statute, I would not be conducting independent research on the topic.

Analysis

I must first note that it is not the role of the arbitrator to be an independent investigator. Rather, the arbitrator's role is to weigh the relevant evidence and authorities presented by the parties, make findings of fact, and apply these facts to the applicable laws. RTB arbitrators are experts in the *Residential Tenancy Act*, the *Manufactured Home Park Tenancy Act,* and their associated regulations*.* If a party believe other statutes relate to their application, it is incumbent upon them to bring these statutes to the arbitrator's attention and explain how they are relevant to the case at hand. In this application, the tenant did not do this. I have not canvassed federal legislation to determine if there is a federal statute that overrides the *Guide Dog and Service Dog Act.*

I note that the *Guide Dog and Service Dog Act* is specifically mentioned in the *Residential Tenancy Act*. Section 18 of the Act 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.
> (2) If, after January 1, 2004, a landlord permits a tenant to keep a pet on the residential property, the landlord may require the tenant to pay a pet damage deposit in accordance with sections 19 *[limits on amount of deposits]* and 20 *[landlord prohibitions respecting deposits]*.
> (3) This section is subject to the *Guide Dog and Service Dog Act*.

As the *Guide Dog and Service Dog Act* is referred to in the Act in the context of pets and pet damage deposits, and as the tenant has failed to cite any other legislation which might override it*,* I find that the *Guide Dog and Service Dog Act* is the applicable legislation regarding service dogs in the context of residential tenancy matters in British Columbia.

Section 1 of the *Guide Dog and Service Dog Act* states:

> "service dog" means a dog that
> (a) is trained to perform specific tasks to assist a person with a disability, and
> (b) is certified as a service dog;
>
> "certified" means certified by the registrar under section 6 or deemed to be certified under section 6.1;

Sections 6 and 6.1 of the *Guide Dog and Service Dog Act* state:

> **Certification**

6(1) The registrar may issue or renew a certificate referred to in section 5(1), in a form satisfactory to the registrar, if the registrar is satisfied that the individual or the dog, or both, as the case may be, identified in the certificate meet all of the conditions, qualifications and requirements imposed under this Act and the regulations.
(2) The registrar may
(a) impose on a certificate any terms and conditions that the registrar considers appropriate, and
(b) amend or remove a term or condition of a certificate.
(3) A certificate expires at the end of the day specified in the certificate.

Deemed certification
6.1(1) A blind person and a dog are deemed to be certified as a guide dog team if the person holds a valid identification card issued to the team by an accredited or recognized training school.
(2) A person with a disability and a dog are deemed to be certified as a service dog team if the person holds a valid identification card issued to the team by an accredited or recognized training school.
(3) Certification of a guide dog team under subsection (1) or a service dog team under subsection (2) ends on the earlier of the following:
(a) the expiry date specified on the identification card;
(b) the date on which an accredited or recognized training school revokes the identification card it issued to the team.

The definition of “service dog” is clear. A “service dog” must both be trained to perform specific tasks to assist a person with a disability and must be certified (or deemed certified) to do so.

Neither party made any detailed submissions as to whether the tenant’s dog was trained to perform certain tasks or that the tenant suffers from a disability. The landlord did not object the tenant’s broad assertions that he was training his dog as a service dog or that the tenant suffered from a disability. As stated above, the landlord only disputed that the tenant’s dog was a “service dog” on the basis that it was not certified as required by the *Guide Dog and Service Dog Act*.

Based on the May 10, 2021 medical form provided by the tenant, I accept that he suffers from a disability that warrants him having a “service dog”. However, it is not necessary for me to determine whether the training the tenant has provided his dog is sufficient so as to have been “trained to perform specific tasks to assist” the tenant as, for the reasons that follow, I do not find that the tenant has proven it is more likely than not that his dog has not been “certified” or “deemed certified” as defined by the *Guide Dog and Service Dog Act.*

The tenant has not provided the response to his May 12, 2021 Application for a Dog-In-Training Certificate or Renewal nor did he testify as to the response received. Without

such a response, I cannot find that the tenant has met the requirement for certification set out at section 6 of the *Guide Dog and Service Dog Act.*

Additionally, I do not find that the tenant has demonstrated that he holds "a valid identification card issued to the team by an accredited or recognized training school" as required by section 6.1 of the *Guide Dog and Service Dog Act.* He did not testify that he possessed such a card. I do not find that the "Service Dog Full Access Card" is such a card, as, on its face, it relates to a foreign jurisdiction (the *American Disability Act* has no applicability in Canada) and make no reference to an accredited or recognized training school in Canada or any other jurisdiction. If find that this card is of no assistance in determinizing whether the tenant's dog is certified, as defined in the *Guide Dog and Service Dog Act.*

Similarly, I do not find the EIDAP Registration document to be of any assistance in determining the tenant's dog's status. It merely shows that the tenant has represented to an organization that the animal in question is a "service dog". It does nothing to prove whether or not this is, in fact, true.

Accordingly, I find that the tenant has failed to demonstrate that his dog is certified pursuant to the *Guide Dog and Service Dog Act.* As such, he is not exempt from section 18 of the Act. I will also note that section 18(3) of the Act only indicates that the provisions at sections 18(1) and (2) are subject to the *Guide Dog and Service Dog Act*. As such, even if the tenant's dog was certified pursuant to a different statutory regime (which I explicitly do not find), I do not find that this would exempt the tenant from paying a pet damage deposit.

Accordingly, I find that the landlord has not breached or failed to comply with the Act by requiring that the tenant pay a pet damage deposit. Section 20 of the Act allows the landlord to require a pet damage deposit when the landlord agrees that the tenant may keep the pet on the residential property. The landlord only agreed that the tenant may keep the pet on the residence on May 3, 2021, as can be seen by the letter it sent the tenant of that same date.

Conclusion

I dismiss the tenant's application in its entirety, without leave to reapply.

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: October 19, 2021