



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding D.F.M. PROPERTY MANAGEMENT & SALES LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes:

OLC, MNDCT, FFT

Introduction:

This hearing was convened in response to an Application for Dispute Resolution filed by the Tenants in which the Tenants applied for an Order requiring the Landlord to comply with the *Manufactured Home Park Tenancy Act (Act)* and/or the tenancy agreement, for a monetary Order for money owed or compensation for damage or loss, and to recover the fee for filing this Application for Dispute Resolution.

Legal Counsel for the Tenants stated that on June 23, 2021 the Dispute Resolution Package and evidence the Tenants submitted to the Residential Tenancy Branch in July of 2021 were sent to the Landlord, via email. She stated that these documents were also sent to the Landlord, via registered mail, on July 23, 2021. The Agent for the Landlord acknowledged receipt of these documents and this evidence was accepted as evidence for these proceedings.

On August 17, 2021 the Landlord submitted evidence to the Residential Tenancy Branch. The Agent for the Landlord stated that this evidence was served to the Tenants, via registered mail. The Tenants acknowledged receiving this evidence and it was accepted as evidence for these proceedings.

On October 13, 2021 the Tenants submitted additional evidence to the Residential Tenancy Branch. Legal Counsel for the Tenants stated that this evidence was served to the Landlord, via email, on October 13, 2021. The Landlord acknowledged receiving this evidence and it was accepted as evidence for these proceedings.

On October 21, 2021 the Landlord submitted additional evidence to the Residential Tenancy Branch. The Agent for the Landlord stated that this evidence was served to

the Tenants, via registered mail, on October 22, 2021. The Tenants acknowledged receiving this evidence and it was accepted as evidence for these proceedings.

The participants were given the opportunity to present relevant oral evidence, to ask relevant questions, and to make relevant submissions. Each participant, with the exception of legal counsel, affirmed that they would speak the truth, the whole truth, and nothing but the truth during these proceedings.

The participants were advised that the Residential Tenancy Branch Rules of Procedure prohibit private recording of these proceedings. Each participant affirmed they would not record any portion of these proceedings.

Issue(s) to be Decided:

Does the Landlord have the right to prevent the Tenant from keeping their dog in the Manufactured Home Park?

Are the Tenants entitled to compensation as a result of the Landlord not giving them permission to keep their dog in the Manufactured Home Park?

Background and Evidence:

The Landlord and the Tenants agree that:

- This tenancy began on May 01, 2021;
- They have a signed tenancy agreement;
- Monthly rent is \$525.00;
- There is a term in the addendum to the tenancy agreement that reads “No large dogs or other domesticated pets that, in the opinion of Management, pose a danger or nuisance to any of the residents will be allowed”;
- The Tenants have a Great Dane, which is a large dog;
- Prior to signing the tenancy agreement, the Tenants were told that their dog would not be allowed in the Manufactured Home Park; and
- The Tenants’ dog is now living in the park.

The Agent for the Landlord stated that:

- The decision not to allow the Tenant’s dog into the Manufactured Home Park was based on the term that prohibits large dogs from being in the Park;
- He is familiar with large dogs and they are, by definition, a nuisance to others;
- All large dogs are dangerous to others as they can nudge or bump people;
- Sometimes dogs get away from owners and pose a threat to others;
- Some residents of the Manufactured Home Park are over 90 years of age;
- Some residents are apprehensive about large dogs;

- Small dogs are permitted in the park; and
- He has never met the Tenants' dog.

Legal Counsel for the Tenants submits that:

- The dog is not a danger or a nuisance, as is evidenced from the letters submitted in evidence from a veterinarian and neighbours who are familiar with the dog;
- The decision not to allow a pet should not be based solely on the opinion of the Landlord;
- The decision to allow a large dog should be linked to the dog being a nuisance or a danger; and
- The Tenants' dog is always kept on a short leash.

The Tenants are seeking \$5000.00 in compensation for loss of quiet enjoyment of the rental unit.

Legal Counsel for the Landlord submits that:

- The Landlord's threats to evict the Tenants and the "continued harassment" regarding the dog have exacerbated the female Tenant's medical condition; and
- The Landlord threatened to evict the Tenants with ten days notice, which is contrary to the *Act*.

The female Tenant stated that the dispute over the dog has caused significant anxiety.

The Agent for the Landlord stated that:

- He was trying to be polite and firm when he informed the Tenants their dog was not permitted in the Manufactured Home Park;
- He did not intend to upset the Tenants, he was just trying to be clear; and
- He mistakenly informed the Tenants they could be evicted with only ten days notice.

Analysis:

On the basis of the undisputed evidence, I find that there is a clause in the tenancy agreement that reads "No large dogs or other domesticated pets that, in the opinion of Management, pose a danger or nuisance to any of the residents will be allowed".

Section 6(3)(b) of the Act stipulates that a term of the tenancy agreement is not enforceable if the term is unconscionable.

Residential Tenancy Branch Policy Guideline #8, with which I concur, defines an

unconscionable term as one that is oppressive or grossly unfair to one party. The guideline suggests that one test for determining unconscionability is whether the term is so one-sided as to oppress or unfairly surprise the other party. It further suggests that an unconscionable term may be a clause limiting damages or granting a procedural advantage.

I find the term that disallows large dogs that “in the opinion of Management” pose a danger or nuisance to any of the residents is unconscionable. I find it unconscionable because it grants the Landlord a significant procedural advantage over the Tenants. The clause allows the Landlord to form an opinion about the dog’s behaviour of the dog without any input from another party.

In the event the Landlord wanted to prevent large dogs from being allowed in the park, the term should simply prohibit dogs of a certain size. In these circumstances, the term prohibits large dogs that pose a danger or nuisance. In my view that requires the Landlord to determine that a dog poses a danger or nuisance for reasons other than size.

I would not consider this term to be unconscionable providing the Landlord determined the dog was a danger or nuisance on the basis of reasonable evidence and on something other than size.

In these circumstances, the Landlord has made no effort to determine whether the Tenants’ dog poses a danger or nuisance. Rather, the Landlord has simply determined that the dog must be a danger or nuisance, which is based solely on the size of the dog.

Conversely, the Tenants have submitted numerous letters that suggest the dog is neither a danger nor a nuisance. In addition, the undisputed evidence is that the dog is always restrained on a short leash, I find this significantly reduces the possibility of the dog accidentally bumping another occupant of the Manufactured Home Park.

I find that the Agent for the Landlord’s decision that the Tenants’ dog poses a danger or a nuisance is not reasonable. I therefore find that the Landlord does not currently have the right to prevent the Tenants from keeping their dog in the Manufactured Home Park.

Section 22 of the *Act* grants tenants the right quiet enjoyment, including, but not limited to the rights to reasonable privacy; freedom from unreasonable disturbance; exclusive possession, subject to the landlord’s right of entry under the Legislation; and use of

common areas for reasonable and lawful purposes, free from significant interference.

Residential Tenancy Branch Guideline #6, with which I concur, reads, in part:

A landlord is obligated to ensure that the tenant's entitlement to quiet enjoyment is protected. A breach of the entitlement to quiet enjoyment means substantial interference with the ordinary and lawful enjoyment of the premises. This includes situations in which the landlord has directly caused the interference, and situations in which the landlord was aware of an interference or unreasonable disturbance, but failed to take reasonable steps to correct these.

Temporary discomfort or inconvenience does not constitute a basis for a breach of the entitlement to quiet enjoyment. Frequent and ongoing interference or unreasonable disturbances may form a basis for a claim of a breach of the entitlement to quiet enjoyment.

I have viewed all of the correspondence between the parties. I cannot conclude that the correspondence sent by the Landlord can be construed as harassing. Rather, I find that the Agent for the Landlord is firmly stating his position that the Tenants' dog is not permitted in the Manufactured Home Park.

Although I have found, in this decision, that the Landlord does not have the right to exclude the Tenants' dog from the Manufactured Home Park, I find that the Landlord legitimately believed that he had that right. I therefore cannot conclude that the Landlord breached the Tenants' right to quiet enjoyment by asserting that position.

One of the purposes of filing an Application for Dispute Resolution is to resolve disputes between landlords and tenants. I find that the Tenants appropriately filed an Application for Dispute Resolution and the matter has now been decided. I cannot conclude that the Tenants are entitled to compensation, in these circumstances. I therefore dismiss the claim for loss of quiet enjoyment.

I find that the Tenant's Application for Dispute Resolution has merit and that the Tenant is entitled to recover the fee paid to file this Application.

Conclusion:

The Landlord does not currently have the right to prevent the Tenants from keeping their dog in the Manufactured Home Park.

The Tenants have established a monetary claim of \$100.00 as compensation for the cost of filing this Application for Dispute Resolution, and I am issuing a monetary Order in that amount. In the event the Landlord does not voluntarily comply with this Order, it

may be filed with the Province of British Columbia Small Claims Court and enforced as an Order of that Court.

In the event the Tenants do not wish to enforce the monetary Order through the Province of British Columbia Small Claims Court, they have the right to reduce one monthly rent payment by \$100.00, pursuant to section 65(2) of 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 *Act*.

Dated: November 09, 2021

Residential Tenancy Branch