Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **CNC**

Introduction

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

- cancellation of the One Month Notice to End Tenancy for Cause (the "**Notice**") pursuant to section 47;

All parties attended the hearing and were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

The tenants (KMJ and JHK) attended the hearing. The landlord was represented at the hearing by the Building Manager and the Property Manager. All were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

The tenants testified, and the landlords confirmed, that the tenants served the landlords with the notice of dispute resolution form and supporting evidence package. The landlords testified, and the tenants confirmed, that the landlords served the tenants with their evidence package. I find that all parties have been served with the required documents in accordance with the *Act.*

At the outset, I advised the parties of rule 6.11 of the Residential Tenancy Branch (the "RTB") Rules of Procedure (the "Rules"), which prohibits participants from recording the hearing. The parties confirmed that they were not recording the hearing.

I also advised the parties that pursuant to Rule 7.4, I would only consider written or documentary evidence that was directed to me in this hearing.

I note s. 55 of the *Act* requires that when a tenant applies for dispute resolution seeking to cancel a notice to end tenancy issued by a landlord, I must consider if the landlord is entitled to an order of possession, and/ or a monetary order if the application is dismissed and the landlord has issued a notice to end tenancy that is compliant with the *Act*.

Preliminary Matter: Recording of the Conference Call

When the parties dial into the hearing the recorded message tells the parties that recording of this hearing is prohibited.

At the outset of the hearing, I advised the parties that recording of this hearing was prohibited and a violation will be referred to the Residential Tenancy Branch Compliance and Enforcement Unit, for investigation and a party that violates the rule could face a fine.

All parties agreed to the terms and **confirmed they were not recording the hearing**. Part way through the hearing, JHK said that the property manager was being recorded. I stopped the hearing and asked JHK if, in fact, he was recording contrary to the Rules outlined and agreed to at the start of the proceedings. JHK stated he was not recording the hearing and meant that [he] had 'recorded previous conversations with the property manager'. The tenant was once again cautioned that recording was prohibited, and the hearing resumed. JHK again confirmed under affirmed testimony that he was not recording the hearing.

If evidence is brought forward that the tenants were unlawfully recording the hearing, the matter will be referred to the Residential Tenancy Branch Compliance and Enforcement Unit, for investigation and the tenants can face penalties of up to $5000.00 per day.

Preliminary Matter #2: Withdrawal of Eviction Notice by Landlord

On January 27, 2022, the resident property manager issued an unaddressed memo/letter stating they were withdrawing the One Month Notice to End Tenancy. It is unclear if this memo/letter was addressed to the RTB or to the tenants or both. The memo/letter to cancel the notice was subsequently rescinded when the tenant refused to sign a pet agreement with the landlord.

Policy Guideline #11 states that a landlord or tenant cannot unilaterally withdraw a notice to end tenancy. A notice to end tenancy may be withdrawn prior to its effective date only with the consent of the landlord and the tenant to whom it is given.

Although the memo/letter was written prior to the January 31, 2022, effective date, it was not signed by both the tenant and the landlord; therefore, withdrawal of the notice is of no force or effect.

Issues to be Decided

Are the tenants entitled to:

1) an order cancelling the Notice.

If the tenants fail in their application, is the landlord entitled to:

1) an order of possession?

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 parties entered into a written fixed term tenancy agreement starting October 1, 2019. Monthly rent is $1250.00, payable on the first of each month. The tenant paid the landlord a security deposit of $625.00. In addition to requiring a security deposit, Clause 8 of the Tenancy Agreement provides for a pet damage deposit if the tenant is permitted a pet. The landlord still retains the security deposit. No pet damage deposit has been provided to the landlord.

On December 27, 2021, the landlord served the tenant with a One-Month Notice to End Tenancy for Cause by attaching the Notice to the tenants' door.

The Notice, issued pursuant to s. 47(1)(h), gives the following ground for ending the tenancy:

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

In the "Details of Cause", the landlord writes the tenants were issued a Caution Notice on November 24, 2021, to remove an unauthorized pet from the premises. When the tenants failed to comply, a final Caution Notice was issued on December 10, 2021, with a compliance date of December 27, 2021. When the tenants yet again refused to comply, the One Month Notice was issued.

The tenants argue that the dog is an "emotional support dog" not a pet and is thus excluded from Clause 17 of the Tenancy Agreement that requires tenants to obtain pre-approval before bringing the dog onto the residential property.

The landlords argue that the dog is a "pet" and subject to complying with all landlord requirements including obtaining prior written consent; payment of a pet damage deposit; and signing and agreeing to the pet policy. The landlord argues that not adhering to the landlord's requirements is a breach of a material term of the tenancy agreement.

The parties agree on the basic facts. Before acquiring the dog, the tenants did not obtain the landlord's prior written permission. The previous resident building manager gave the tenants written permission (via text message) allowing the tenants to keep the

dog. When the property manager and new resident building manager learned the dog was approved by the former resident building manager, the caution notices were rescinded, and the tenants asked to pay the pet damage deposit and sign the pet agreement. At the time of this hearing, the tenants had neither paid a pet damage deposit nor signed a pet agreement.

JHK stated that on November 11, 2021, he and KMJ purchased a puppy and brought the puppy home. The puppy is currently five (5) months' old. The tenants immediately informed the building manager about the pet and inquired about the pet deposit. The resident building manager, in a text message on November 15, 2021, confirmed the pet was allowed and a pet damage deposit in the amount of $625.00 must be paid. The tenants stated that the prior resident building manager even offered to "puppy sit".

On November 24, 2021, the same (prior) resident building manager issued a correction letter stating "we have noticed that an unauthorized dog is being kept in your unit…. we acknowledge that this pet does not conform with our pet policies." The correction letter went on to state the tenants had until December 9, 2021 "to remove the pet permanently from the premises" and that "failure to do so by this date would indicate the applicable grounds for ending your residential tenancy."

Upon receipt of this letter, JHK stated that they "scrambled to get the dog certified" [as a support animal] and secured a consult on or before November 29, 2021. A letter from a Registered Mental Health Professional (RMHP) stated that KMJ is "currently engaged in mental health services through my private practice and is under my care". The RMHP asked the landlord to "please make a reasonable accommodation" for the dog based on the RMHP's familiarity with KMT's "mental health related illness" as defined by the Diagnostic and Statistical Manual- Edition 5".

On January 4, 2022, at 12:10 KMJ had an online consultation with the Mental Health Support Line and was diagnosed with "mixed anxiety and depressive disorder".

In a written submission in support of their application, KMJ stated that she was born with sensorineural hearing loss (SNHL) and the dog is "just learning, in the process of, being trained to help answer phones and the door". The tenants argue that the dog is not a "pet" but a "support animal" and provided a copy of a blog, "No Pet Clauses and Human Rights" from the BC Human Rights Tribunal website that talked about support animals.

JHK testified soon after the landlord retracted the written caution notices, three (3) men came to the door to inspect the unit unannounced. The tenants refused to let them in alleging the inspection was "not routine" rather, the inspection was "discriminatory" based their having an "emotional support dog" and further, they were quarantined.

JHK stated the tenants are willing to pay a pet damage deposit but have not done so yet. They refuse to sign the pet agreement form provided by the property manager

because “no one else in the building has been asked to sign a pet agreement” and so he should not be required to sign an agreement either. JHK states that he will not sign the property manager’s standard Pet Agreement and will not sign a Landlord BC Pet Agreement. He prefers to draft his own agreement for the property manager to sign or sign a Residential Tenancy Branch Pet Agreement.

The property manager stated that the previous resident building manager, who permitted the tenants to keep the pet, was inexperienced and did so in error. Once the property manager became aware that permission was granted, they rescinded the warning/correction letter owning the mistake that was made. The pet could remain with a pet deposit and a signed pet agreement. The property manager thought the landlord and tenants had an agreement and so applied to withdraw the Notice. When the tenants refused to sign the pet agreement and no pet damage deposit was provided, the property manager rescinded the withdrawal.

The property manager testified that the pet agreements from Landlord BC and their own pet agreement both comply with Residential Tenancy Branch requirements. The property manager states that all tenants who own pets are required to sign a pet agreement and pay a pet damage deposit. If, there are tenants who own pets in the building who have not signed a pet agreement or paid a pet damage deposit, it is most likely because the pets are unauthorized. The property manager asked the tenant to provide specifics – who in the building had a pet and has not signed a pet agreement? The tenants declined to answer.

The property manager stated it is important for the landlord to retain control over the size and types of pets allowed on the rental premises for the health, safety, and well-being of all tenants and pets.

The property manager argues that the dog is a pet, not a “support animal” and stated the letter submitted by the tenants requesting an accommodation can be purchased online without restriction. The property manager submitted into evidence a letter from the same RMHP dated August 5, 2020. The letter is identical in form and content to the letter the tenants submitted, is from the same RMHP, only the names of the people, pet, and date have been changed. The property manager also had a staff member reach out to the RMHP inquiring about how to get a letter from a counsellor to clear “a puppy as an emotional support animal”. The RMPH replied as follows:

> *Hi XXXX,*
> *Thanks for reaching out.*
> *Curious how did you find us?*
>
> *I actually have a sister site I can refer you to who specialize in ESA letters! Just complete the assessment online and pay the fee and either myself or a colleague will reach out for a consultation call.*

https:// XXXXXXXX

Kind regards, [RMPH]

The property manager also stated that the Property Management Company reach out to the RMHP by phone, email, and through her website. The RMHP refused to respond to their requests for information. The RMPH's reluctance to speak with the landlord, the form letters sent out by this provider, and the email response to the staff person's inquiry makes the authenticity of the accommodation requests issued by this provider suspect.

The property manager stated that they are willing and open to reaching a settlement on the matter of the pet agreement. The property manager said that they would amend the pet agreement and remove the two clauses the tenants objected to:

> #6. The Landlord reserves the right to revoke the right to have a pet on the premises, or on certain floors of the premises, even though none of these conditions have been violated.

The tenants also referred to a clause requiring monthly shampooing/deflea-ing of the carpet that the property manager agreed to remove. The tenants also objected to the "neutering" clause, which the property manager confirmed is not required at this time because of the dog's age. The property manager stated that under no circumstances would the property manager agree to signing an agreement written by the tenant.

The property manager concluded stating that "emotional support dogs" are not recognized in British Columbia only "service dogs" as defined by the *Guide Dog and Service Dog Act (GDSDA)* are recognized. Accordingly, they submit, the animal in question must be treated as a pet for the purposes of the tenancy, and a pet damage deposit and pet agreement are required.

In response to the tenants not permitting the property manager entry to the rental unit, the property manager pointed out that they issued a Notice of Entry on December 05, 2021, advising the tenants that they would be doing a "routine building/suite inspection" on December 8, 2021, at 3:00 p.m. The property manager stated that pre-COVID they did routine inspections twice per year. Due to COVID the inspections ceased but the property manager is reintroducing them, as is their right with appropriate notice.

Analysis

The landlord has applied for a One Month Notice to End Tenancy for Cause relying on s. 47(1(h) (i) and (ii) of the *Act.* That section provides 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.

The landlord has the onus to prove the grounds of the Notice pursuant to rule 6.6 of the Rules. The standard of proof is on a balance of probabilities meaning it is more likely than not the facts occurred as claimed.

A material term is defined as a term that is so important that the most trivial breach of that terms gives the other party the right to end the agreement. The question of whether or not a term is material must be determined in every case by considering the facts and circumstances surrounding the inclusion of the clause in the tenancy agreement in question. The arbitrator will look at the true intention of the parties in determining whether or not the clause is material.

Section 18 of the *Act* sets out the rights of landlords in respect of pets and pet damage deposits. Section 18 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, 2003, a landlord permits a tenant to keep a pet, 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].*
[emphasis added].

Clause 17 of the Tenancy Agreement (**Clause 17)** states from the outset, in bold print that Clause 17 is a **material term** of the tenancy agreement and that all tenants require the landlord's prior written consent before "keeping or allowing" any animal on the residential property. Clause 17 complies with s. 18 of the *Act*, which permits the landlord to 1) prohibit pets 2) restrict the size, kind or number of pets.

The tenant submitted into evidence a blog from the BCHRT website, "No Pet Clauses and Human Rights". [emphasis added] It is important to note that Clause 17 does not prohibit tenants from having pets, which the landlord has the right to do under s. 18 of the *Act*, but rather states that pet requests are considered on a case-by-case basis and

require the prior written consent of the landlord before being allowed on the residential property.

The "No Pet Clauses and Human Rights" blog points out, "Landlords may also be within their rights to restrict the number and size of the dogs someone may own". This information is in keeping with Clause 17 and s. 18 of the *Act.*

The blog makes a distinction between "service dogs" as defined in the *Guide Dog and Service Dog Act* and what tenants refer to as companion animals, therapy, and emotional support animals which are defined under the *Guide Dog and Service Dog Act* as "pets". Nowhere in the blog does the blogger state that companion animals, therapy and emotional support animals are exempt from pet clauses but does state, "Strata bylaws and rental terms prohibiting or restricting pets do not apply to BC certified guide and service dogs" again, in keeping with the provisions of the *Residential Tenancy Act*.

The blogger does state, "the strata's or landlord's rules may have to be adjusted to accommodate the resident's needs." [emphasis added] Again, a review of Clause 17 shows that the landlord evaluates pet requests on a case by case basis.

Clause 17 reads,

> **It is a material term** of this Agreement that, without the landlord's prior written consent, the tenant may not keep or allow on the residential property any animal, including a dog, cat, snake, bird, reptile, or exotic animal, domestic or wild, fur bearing or otherwise. If the tenant has written permission of the landlord, the tenant must ensure the pet does not disturb or interfere with any person on the residential property or neighboring properties or cause any damage to the rental unit or residential property. Should the pet cause any such damage, the tenant will be responsible for any resultant costs to the landlord of repairing the damage, compensating any person, and recovering legal or other expenses. If the tenant fails to correct a violation of this clause, including permanently removing a pet from the residential property after receiving notice from the landlord to correct the violation, the landlord may end the tenancy.

It is important to note, that Clause 17 also sets out the main terms of the pet agreement policy the landlord asked the tenant to sign. The pet clause and the pet agreement are intended to provide protections against pet damage by way of a pet deposit, liability coverage through renter's insurance, and established rules and expectations regarding pet behavior. Unauthorized pets can cause damage and have the potential to hurt people or other pets on the landlord's property resulting in liability issues.

The tenants did not ask or receive permission prior to purchasing their pet; however, the previous inexperienced residential building manager provided written consent after the fact. The property manager acknowledged the consent and attempted to work with the

tenants requiring the pet damage deposit and the pet agreement. The tenants refused to cooperate.

The tenants state the dog is not a "pet" but an "emotional support animal" helping KMJ cope with anxiety and self-harm tendencies and is, therefore, excluded from the "pet clause". They state no prior landlord permission is required under Human Rights. The tenants did not reference a specific section of the HRC applicable to their case but simply submitted the blog referencing "no pet clauses", that as mentioned previously is not applicable to Clause 17 in their tenancy agreement.

I must also point out that it is not the role of the arbitrator to be an independent investigator. Rather, the arbitrator's role is to weight 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, and Manufactured Home Park Tenancy Act, and their associated regulations. If a party believes 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 tenants did not do this.

The tenants submitted a letter from the RMHP requesting the landlord allow the emotional support dog to accommodate the mental health issues of KMJ. The letter provided no diagnosis, vague references to the DSM5, and concluded with the following sentence, "This letter expires 1 year from 11/29/2021, at which time XXX will be assessed for continued need of an emotional support animal." The follow up assessment a year later appears to contradict the opening sentence that KMJ "is currently engaged in mental health services through my private practice and is under my care" unless that simply refers to the initial consultation that gave rise to the letter.

The landlord provided compelling evidence that the "accommodation" letters were form letters and that the provider, for a fee and an online assessment, would issue a letter "prescribing" an emotional support animal. The provider would not respond to the landlord's inquiries.

I prefer the evidence of the landlord over the tenants' evidence on this matter. The summative evidence supports, on a balance of probabilities, that it is more likely than not, these letters can be obtained online without restriction and regulation for a fee.

KMJ also stated that in addition to mental health issues, she was born with sensorineural hearing loss (SNHL). She provided no supporting medical evidence confirming the diagnosis or supporting medical information detailing the degree of damage: mild, moderate, or severe hearing loss. With respect to a hearing impairment, KMJ testified and also wrote, "Previously I wasn't able to hear the doorbell ring when friends wanted to come over, so I'd have to rely on my fiancée, JHK to be present… he [the dog] has been able to quietly and calmly bring to my attention that someone has

buzzed. His ears pop up, he looks at me, and goes to wait by the phone…..He's only four months old". KMJ implied that the dog was functioning as a "service dog".

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 tenants have 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.

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;

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 is 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 I identification card.

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. If KMJ is sufficiently hearing impaired, then she may qualify for a hearing dog specifically trained to support the needs of hearing- impaired people.

Accordingly, I find that the tenants have failed to demonstrate that their dog is a "service dog" pursuant to the *Guide Dog and Service Dog Act.*

There is no provincial recognition for emotional support animals in British Columbia and emotional support dogs are not eligible for certification as service dogs. Pets include any animal not certified under the *Guide Dog and Service Dog Act*. [Arlin v. Coast Mountain Bus, 2016 BCHRT 71][1] .

Since emotional support animals are not recognized in British Columbia, the tenants' dog is considered a "pet" and is not exempt from either s. 18 of the *Act* or Clause 17 of the Tenancy Agreement and the landlord's requirements for a pet damage deposit and a signed pet agreement.

I now turn my mind to whether the tenants breached a material term of the tenancy agreement, specifically Clause 17. On the narrow issue of a "**breach of a material term**" I find that the tenants did initially breach a material term of the tenancy agreement when they 'kept or allowed' the dog on the residential property prior to obtaining written consent; however, the breach is of no force or effect since the prior resident building manager provided written consent to the tenants albeit after they had brought the dog onto the residential property.

Accordingly, I find the tenants are not in breach of Clause 17, a material term of the tenancy agreement. The One Month Notice to End Tenancy for Cause is cancelled. The tenancy will continue until otherwise ended in accordance with the *Act*.

The primary issue of dispute between the parties is not if the dog remains on the residential premises, permission has been granted for the dog to remain with the tenants. The issue is whether the tenants are required or not required to sign a pet agreement. The tenants themselves testified that they have no objection to providing a pet damage deposit although have not done so. .

The tenants argued that no other tenants were required to sign pet agreements. Notwithstanding this may or may not be fact, the landlord can enter into different agreements with different tenants. There is nothing in the legislation that states all Tenancy or Pet Agreements must be cloned. In point of fact, the landlord was willing to

[1] https://www.can .org/en/bc/bchrt/doc/2016/2016bchrt71/2016bchrt71.htm ?autocomp eteStr=Ar n&autocomp etePos=4

amend their standard pet agreement form or use the LandlordBC pet agreement to facilitate tenant compliance and the tenants refused.

Section 18 gives the landlord the right to request a pet damage deposit and a pet agreement. Specifically, s. 18(1) allows the landlord the right to 'govern a tenant's obligations' in respect to keeping a pet on the residential property – in other words, require the tenant sign a pet agreement. As mentioned previously, Clause 17 sets out the tenants' obligations after written permission to keep the pet is provided. It mirrors the requirements in the pet agreement.

It is important for the landlord and tenant to understand the restrictions and obligations concerning the payment of a pet damage deposit as there are consequences for failing to comply with the *Act.*

A landlord, for example, must not require more than ½ month's rent as a pet damage deposit and if a landlord does require more than ½ month's rent the tenant has recourse through an application to the RTB asking for an order that the landlord comply with the *Act.*

The tenant must within 30 days after receiving permission to have a pet, pay the pet damage deposit. The landlord's recourse if the pet damage deposit is not paid or the tenant refuses to comply with s. 18 is to seek an end to tenancy by way of a 1 Month Notice to End Tenancy for Cause under s. 47(1)(a).

I note in the text message dated November 15, 2021, that the tenants submitted into evidence, the prior resident building manager stated the pet damage deposit is $625.00 which was to be paid by November 19, 2021 but was not paid and had not been paid at the time of the hearing. To comply with the *Act* and be in good standing with the Tenancy Agreement, the tenants are required to pay the $625.00 pet damage deposit and sign a pet agreement as negotiated with the landlord.

I order the tenants to comply with s. 18 of the Act, within 30 days from the date of this letter.

Conclusion

I grant the tenant's application to cancel the One Month Notice for Cause. The tenancy will continue until otherwise ended in accordance with the *Act*.

I order the tenants to comply with s. 18 of the *Act*, within 30 days from the date of this letter.

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: February 28, 2022

Residential Tenancy Branch