Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, FFT

Introduction

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

- the cancellation of the One Month Notice to End Tenancy for Cause (the "**Notice**") pursuant to section 47; and
- authorization to recover the filing fee for this application from the landlord pursuant to section 72.

The tenant attended the hearing. The landlord was represented at the hearing by its resident manager ("**KS**"). All were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses. The tenant called one witness to corroborate her testimony on certain key conversations ("**LN**").

The tenant testified, and the KS confirmed, that the tenant served the landlord with the notice of dispute resolution package and supporting documentary evidence. KS testified, and the tenant confirmed, that the landlord served the tenant with their documentary evidence. I find that all parties have been served with the required documents in accordance with the Act.

Issues to be Decided

Is the tenant entitled to:

1) an order cancelling the Notice;
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 parties entered into a written, fixed term tenancy agreement starting October 1, 2020 and ending September 30, 2021. After the end of the fixed term, the tenancy converted to a month to month tenancy, as per section 44(3) of the Act. Monthly rent is $1,700 and is payable on the first of each month. The tenant paid the landlord a security deposit of $850, which the landlord continues to hold in trust for the tenant.

The tenancy agreement contains the following clause:

> **Pets**. Having regard to the enjoyment, quiet possession an health requirements of other occupants in the residential property, as well as the nature of the property; **the tenant shall not keep, or allowed to be kept, any animals or pets**, domestic or wild, furbearing or otherwise, **unless specifically permitted in writing by the landlord, which permission may be revoked by the landlord at anytime**, particularly having regards to the factors set out above, which factors are not all inclusive. Where the landlord has given his permission in writing, the tenant shall ensure that the pets and animals do not disturb the other occupants in the residential property or adjoining property, and further the tenant shall ensure that no damages occur to the residential property, as a result of having the animals and pets. This is a material condition of this agreement.[…]
>
> [emphasis added]
> (the "**Pet Clause**")

The tenant testified that in February 2021 she spoke with KS about the possibility of purchasing an emotional support dog. KS testified the tenant at first described the animal she wanted to purchase as a "service dog" but had a subsequent meeting advised him that it would be an "emotional support dog".

The tenant testified that she wanted to get permission to purchase such a dog, as she understood that she needed permission from the landlord to be able to keep an animal in the rental unit. She testified that KS told her that if she got a letter from her therapist, it "shouldn't be a problem". She testified that she asked KS that, if she provided him with this letter, she would be able to get emotional support dog. She testified that KS said yes. The tenant testified that she provided KS, via an email to the only email address she was provided for the landlord, the requested letter for her therapist, which stated:

> I have prescribed an emotional support animal as part of the treatment program for [the tenant]. The presence up this emotional support animal is necessary for [the tenant's] mental health well-being.

The tenant testified that shortly after sending this letter, she saw KS around the residential property, and he confirmed to her verbally that he had received the letter. She asked if that meant she could keep a dog in the rental unit and she testified he said "yes, it should be fine". The tenant then asked for KS to email her confirmation of this, and KS indicated that he would provide it. However, KS never sent that email. The tenant testified that she never followed up with KS to get his confirmation in writing.

LN testified that he was with the tenant when she had this conversation with KS, and that he remembers it distinctly because of how happy she was to learn she could have an emotional support dog.

KS testified that, in his mind, he conflated an “emotional support dog” with a “service dog”. He admitted he told the tenant that she would have to provide a note from her therapist confirming the need for an emotional support dog in order to get permission to keep one in the rental unit. He admits that this was a mistake, and that this would only have been the case for a “service dog”, and not an “emotional support dog”.

While KS admits to receiving the therapist’s letter, he denied giving verbal confirmation to the tenant that she may keep a dog in the rental unit, at any point during the tenancy, either before or after the tenant purchased the dog. He testified that after receiving the letter from the therapist, he called his co-worker and asked if it was okay for the tenant to have a “service dog” in the rental unit. He testified that his co-worker verbally told him that this was fine. He testified that he did not pass this approval on to the tenant verbally or in writing.

The tenant testified that following the conversation in early March 2021 with KS (at which she and LN says KS told her that she could keep a dog in the rental unit), she purchased an emotional support dog for approximately $5,000. She testified that after she purchased it, she brought it to show to KS. She testified that KS did not object to her having purchased it. She testified that, for several months, there was no issue from KS about her having the dog. She testified that KS was very affectionate with the dog when he saw it around the residential property and that, on one occasion, he came into the rental unit to play with it.

KS did not deny any of this.

The tenant testified that in late July 2021 there was a fire alarm in the building. She testified that she took the dog outside to wait to be able to return to the building. She saw two individuals in the landlord’s office on the residential property. She did not know who these people were at the time, but later learned they were employees of the landlord and one of them (“**Ms. E**”) was KS’s superior. The tenant did not know the name of the other individual.

The tenant testified that this other individual approached her and asked if she lived in the building. She confirmed that she did. She was asked if she had permission that to keep a dog in the building. The tenant confirmed that she did and told the individual that she had sent her therapist note to the landlord via email. At this time, she was unaware that the email address she sent it to went to KS directly, and not to the landlord generally. The man then stated that he was unaware of such a letter and asked her to re-send it. Shortly thereafter, the tenant resent the letter to the same email address as before (the only address she was provided and the one that went to KS directly).

KS confirmed that the individual who spoke with the tenant was the co-worker who he spoke to and who confirmed to him that the tenant could have a “service dog” in the rental unit.

The tenant testified that this interaction caused her significant stress and negatively affected her mental health. She testified that after resending her therapist's letter, she did not hear back from the landlord for some time. She testified that a family member helped her track down Ms. E's phone number. The tenant called Ms. E to try to get confirmation that she could keep her dog in the rental unit. The first conversation with Ms. E was cordial, and the tenant testified that Ms. E was sympathetic and told her she would look into it and get back to her. The tenant called Ms. E some time later, and testified that Ms. E was rude to her and told her that that KS had never given her permission to have a dog in the rental unit, and that she was in breach of the tenancy agreement by having it.

The tenant testified that Ms. E offered to relocate her to another property that the landlord managed which allowed dogs, but that the tenant refused, as the location of the rental unit was convenient for her.

The tenant testified that the landlord then served her with the Notice on September 27, 2021 citing as the basis for ending the tenancy as:

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

The Notice provided further details for the cause of eviction as:

> Tenant has a pet (dog) in a no pet friendly building. As per contract we do not allow pets in the building

The tenant testified that a few days before receiving the Notice she received a brief email from KS stating that the tenant had to get rid of the dog as she was in breach of the tenancy agreement.

The tenant submitted a recording of a conversation she had with KS after being served with the Notice where she attempted to figure out why she was served with the Notice. She recounted, in brief, the evidence I outline above, and asked KS if he had told the people above him at the landlord her side of the story. She explained that if she knew getting a dog was going to be a problem or that she did not have permission, that she would not have purchased the dog. She only did so because she understood that he had authorized it. KS did not disagree. He stated:

> I basically told them the whole story of how it went, you approached me in the first place, you approached me in the second place, showing the documents to them, on the computer, in the email and they don't want to hear it. They said there's no dogs in the building.

The tenant argued that the Notice should be cancelled because KS verbally told her that she could have a dog after she provided the documentation he asked for. She asked for

written confirmation but did not receive it. She argued that KS's consent to her having a dog in the rental unit was obvious given the way he interacted with the dog in the months after she purchased it.

KS stated that he never consented to the tenant having a dog in the building, and as such, the Notice should be upheld.

Analysis

The tenant did not dispute that the Pet Clause is a material term of the tenancy agreement. Nor did she claim that she was provided written confirmation, which the Pet Clause requires, that she could keep a dog in the rental unit. KS did not claim that the tenant misled him as to the nature of the dog she would be keeping in the rental unit (that is, that it would be an emotional support dog as opposed to a service dog).

Rather, I understand the tenant's argument to be that she was told by KS, in his capacity as agent for the landlord, that she could keep an emotional support dog in the rental unit so long as she provided him with a note from her medical professional stating that it was necessary. She provided such a note and, as I have found above, was given verbal permission by KS that she could keep the dog in the rental unit. Additionally, she argued that the KS's consent that she could keep a dog in the rental unit could be inferred from his conduct after she purchased the dog, specifically that he never objected to her having it, and would regularly play with it. I understand the tenant to take the position that KS's verbal consent, coupled with his conduct and with her request for written confirmation which she never received, is sufficient to meet the requirement in the Pet Clause.

I understand the landlord's argument to be that KS gave implied permission via conduct or failed to deny her request to keep a dog on KS's mistaken belief that "emotional support animals" and "service animals" were interchangeable terms. Although not explicitly stated by KS, it appears likely that the landlord has a standing policy to allow service animal in buildings. (Although, I note that the Pet Clause makes no distinction between service animals or emotional support animals.)

I understand the landlord to have taken the position that the tenant must cease keeping the dog in the rental unit as she has not obtained written permission to keep the dog.

KS is the residential property's resident manager. Additionally, I accept the tenant's testimony that the only email address she was provided by the landlord was one that was monitored by KS alone. Additionally, given the KS contacted a co-worker inquiring whether or not the tenant could keep a dog in the rental unit and that the co-worker stated that she could, but did not take it upon himself to provide such approval to the tenant directly, I find that the landlord has delegated authority to KS to be its agent, and to exercise powers granted to the landlord pursuant to the Act and the tenancy agreement.

I do not find it unreasonable for the tenant to rely on KS to comply with the landlord's requirements for pet approval and to believe that KS spoke on behalf of the landlord when advising her that she could keep a dog in the rental unit.

The parties' testimony differs as to whether KS verbally confirmed to the tenant that she could keep a dog in the rental unit. Upon considering the testimony of the tenant, KS, and LN, as well as the surrounding circumstances, I find that it is more likely than not that KS gave verbal confirmation to the tenant that she could have a dog in the rental unit.

The tenant's testimony that this occurred was corroborated by LN. Additionally, the uncontroverted evidence shows that the tenant asked KS if she could keep a dog in the rental unit before purchasing one and that she provided documentation requested by KS, which KS told her was necessary for getting permission to keep a dog. I cannot see why, after taking these steps, the tenant would then have not waited to receive a response from KS before she purchased, at no small expense, a dog.

Additionally, KS testified that he received the therapist's note from the tenant, then asked a co-worker whether the tenant could have a "service dog" and was told that she could. It makes little sense why KS would take these steps, and then not take the final step of giving approval to the tenant.

The tenant's undisputed testimony about KS's subsequent interactions with her and the dog (playing with the dog, not objecting to its presence when seeing it at the residential property, for example) further corroborates the tenant's testimony that she received verbal permission from KS to keep the dog. I do not find that such

Where KS's and the tenant's testimony differ, I prefer that of the tenant.

I accept the tenant's testimony that she asked for written confirmation of this permission, that KS agreed to provide such confirmation, and that he never provided it.

However, despite I this, I find that the landlord is within its rights to have issued the Notice.

In addition to requirement that the tenant obtain written permission before keeping a pet in the rental unit, the Pet Clause also grants the landlord the broad authority to revoke such permissions "at any time". Additionally, the Pet Clause does not require that there be any inciting incident for such a revocation. It states that permission may be revoked "particularly having regards to the factors which are set out above, which factors are not all inclusive." This means that the landlord can cite factors other than those stated in the Pet Clause (the enjoyment, quiet possession, and health requirements of other occupants) as reason for revoking the permission. Additionally, the use of the word

“particularly” indicates that the revocation is not restricted to any specific factor or indeed any factor at all.

I find that the language of the Pet Clause is sufficiently broad so as to allow the landlord to unilaterally revoke permission to a tenant to keep a pet in the rental unit at any time for any reason. This would include the reason that permission was accidently given.

As such, I do not need to determine whether the verbal permission granted by to the tenant by KS is sufficient to satisfy the writing requirement of the Pet Clause. Even it were, the landlord would still be within its contractual rights to revoke the tenant’s permission to keep a dog in the rental unit.

I find that the reason cited on the Notice (that the tenant had breached a material term and failed to correct this breach within a reasonable period of time) is a valid reason for ending the tenancy. As such, I decline to cancel the Notice.

Section 55 of the Act states:

> **Order of possession for the landlord**
> 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.

I have reviewed the Notice and find that it meets the section 52 form and content requirements. As such, I must issue the landlord an order of possession.

The Act does not specify when the effective date of such an order of possession must be. It is left to the discretion of the arbitrator. In the circumstances, I find it appropriate to make the order of possession effective July 31, 2022.

Based on my review of the evidence, I find that KS mistakenly or incorrectly applied the landlord’s policy regarding animals in the building (by granting verbal permission to allow an emotional support dog when the landlord’s policy is only to allow service dogs). While the landlord is entitled to revoke such permission, I am not unsympathetic to the tenant in these circumstances. I do not find it appropriate to unduly punish or inconvenience her for KS’s mistake, as I have no doubt that, but for KS’s error, she would not have purchased the dog.

I find that, at every step of the process, the tenant has acted appropriately, seeking permission when required and providing the needed documents. She asked for written confirmation from KS, but was never provided with it. I do not fault her for neglecting to

follow up to get such confirmation, given the verbal authorization, and the repeated tacit or implied authorization of her having a pet, given by KS each time he saw the tenant with her dog and said nothing about it.

Given the relative difficulty in finding pet-friendly accommodations, I find it appropriate to provide the tenant with ample time to locate a new place to live. I also understand that the tenant is a student and that she lives near to her school. I do not find it appropriate to order that she relocate until after her current semester has completed.

As I have dismissed the tenant's application to cancel the Notice, I decline to order that she be reimbursed the filing fee.

Conclusion

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

Pursuant to section 55 of the Act, I order that the tenant deliver vacant possession of the rental unit to the landlord by July 31, 2022 at 1:00 pm.

I order the landlord to serve the tenant with a copy of this decision and attached order of possession within three days of receiving it from the RTB.

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 9, 2022

Residential Tenancy Branch