



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, OLC, FFT

Introduction

This hearing was convened by way of conference call concerning an application made by the tenant seeking an order cancelling a notice to end the tenancy for cause; an order that the landlord comply with the *Residential Tenancy Act*, regulation or tenancy agreement; and to recover the filing fee from the landlord for the cost of the application.

The hearing was originally scheduled to be heard on July 15, 2022 at which time the tenant attended as well as a property manager who acted as Agent for the landlord, a property management assistant and a building manager for the landlord. The tenant applied to adjourn the hearing stating that the tenant's Advocate was not available. The adjournment was opposed by the landlord, however I allowed the adjournment to August 10, 2022 peremptory on the tenant and my Interim Decision was provided to the parties.

On August 10, 2022 the same parties attended and the tenant was accompanied by a Law Student. The tenant and the landlord's agent each gave affirmed testimony and the tenant called 1 witness who also gave affirmed testimony. The parties, or their representatives were given the opportunity to question each other and the witness and to give submissions. The landlord's property management assistant and a building manager observed only and did not take part in the hearing.

No issues with respect to service or delivery of documents or evidence were raised, and all evidence provided has been reviewed and is considered in this Decision.

Issue(s) to be Decided

- Has the landlord established that the One Month Notice to End Tenancy for Cause dated March 18, 2022 was given in accordance with the *Residential Tenancy Act*, specifically with respect to the reason(s) for issuing it?

- Has the tenant established that the landlord should be ordered to comply with the *Residential Tenancy Act*, regulation or tenancy agreement?

Background and Evidence

The landlord's agent testified that this fixed-term tenancy began on February 1, 2022 and reverts to a month-to-month tenancy after January 31, 2023 and the tenant still resides in the rental unit. Rent in the amount of \$1,795.00 is payable on the 1st day of each month and there are no rental arrears. On January 17, 2022 the landlord collected a security deposit from the tenant in the amount of \$897.50 which is still held in trust by the landlord, and no pet damage deposit was collected. The rental unit is an apartment in a complex containing 6 floors, and a copy of the tenancy agreement has been provided by the landlord for this hearing.

The landlord's agent further testified that on March 18, 2022 the tenant was served with a One Month Notice to End Tenancy for Cause and a copy has been provided by the landlord for this hearing. It is dated March 18, 2022 and contains an effective date of vacancy of April 30, 2022. The reason for issuing it states: 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 was posted to the door of the rental unit by the building manager.

On January 31, 2022 the landlord's agent received an email from the building manager stating that the tenant had informed that he had a small service dog and didn't disclose that because he had been previously discriminated against while looking for an apartment. The tenant had given the building manager documentation, but the building manager sent the tenant an email, with a copy to the landlord's agent, stating that the document provided is not recognized in BC as certification. It is a letter of registration from "ADA Assistance Dogs of America." A copy of the document has been provided for this hearing. The tenant was advised that the *Act* states that landlords are only required to accept dogs that have Guide Dog Certification, and must be recognized in Canada. The certification provided by the tenant is not recognized and the tenancy agreement prohibits dogs. Anyone can get the certification document that the tenant provided without training the dog as long as they pay the fee.

On February 1, 2022 an email was sent to the tenant by the building manager, and a copy has been provided for this hearing. On March 1, 2022 a breach letter was sent to the tenant stating that no pets were on the Application to Rent and the tenant did not mention an emotional support pet to the building manager. The tenant had been clearly

informed that pets were not allowed and the tenant falsely put in the application that he agreed to it.

On March 11, 2022 the landlord gave a second breach letter stating that the tenant had not removed the dog and that there was an exemption for service dogs and how to go about that. It also states to remove the dog by March 16, 2022 or further action may include a notice to end the tenancy.

The landlord understood that a doctor had recommended that the tenant would benefit by a support dog, but not that he needed it. Similar rentals are available with pets allowed.

Other tenants have complained verbally that there was a dog in the building contrary to the rules. One tenant said that the dog had barked, but the building doesn't allow pets and that was the purpose of the landlord's letter. It is not a pet friendly building. A paragraph in the Addendum to the tenancy agreement mentions a "Grandfather" clause, for tenants who moved in years ago, prior to the landlord prohibiting pets, but not for new tenants, and all pets previously have been transitioned.

The tenant testified that he suffers from depression since youth and made a suicide attempt in 2004, and has come a long way to be where his is now. The tenant has a daughter and went through a hard separation causing the tenant to fight to see his daughter. The tenant needed medication to deal with depression and it was suggested that the tenant get a dog to combat depression, by a therapist and a friend who has an emotional support animal. In 2019 the tenant was able to receive his emotional support dog, who was chosen because she's small and hypo-allergenic. The tenant has also provided a copy of a letter from a therapist and a doctor.

In 2022 the tenant was ready to continue his life and living situation. The tenant's daughter goes to school in the area and it took months for the tenant to find a place. The tenant was turned down when mentioning an emotional support dog. This was the first building that the tenant was accepted to and the only choice the tenant had to make life feasible.

There were no complaints and no barking. The tenant takes the dog to work, restaurants and grocery stores. The tenant needs the affection and calming to try to put up with every day life.

The tenant has looked into it, but it's very expensive to have the dog trained and can only be done by certain schools. The test to pass is very difficult and not every dog can

pass. The tenant's dog is quiet but the tenant would have difficulty getting her to pass the certification.

Currently there are 3 other places on the market, and the tenant has been denied one of them and hasn't checked into the other 2 yet, but has viewed several and there are far too many people looking for rental units.

The tenant has been respectful and carries the dog in a carrier and never leaves her alone in the building.

The tenant can't afford to move and will lose custody rights.

The tenant's witness has been the tenant's therapist periodically for probably 10 or 12 years who has been seeking help with depression and anxiety. The tenant suffers from bouts of quite debilitating anxiety, self deprecating thoughts, so the witness shows the tenant techniques, and how to change his thinking pattern to deal more effectively with what's happening in his life.

The tenant is low on assertiveness, a kind person and had a shortfall of people in his life and the witness recommended a support animal., which is like an anti-depressant and anti-anxiety, helping him to stabilize by having a dog to relate to. There have been significant gains from that, and the concern is how far down he can go without the pet because it's a source of comfort that replenishes him daily to be with the pet and raises his inner thermostat of well being. It makes a significant difference.

The witness is not aware of qualifications required for a service or guide dog, it seems like more of a legal issue, but from the witness' perspective, the defining factor is whether it's a regular person who thinks they should get a dog to bring fun or pleasure. For the tenant, it's a mental health necessity and essential to his well-being.

SUBMISSIONS OF THE LANDLORD'S AGENT:

The tenant signed a tenancy agreement, agreeing to not bring pets but did so anyway, and told the landlord after the fact. That is not acceptable behaviour.

The tenancy agreement is used by all professional managing agents in BC, and the Addendum was drawn up by the landlord's lawyer who specializes in residential tenancies and the landlord has taken advice of numerous lawyers. No pets are allowed because of numerous damages done by pets in the past. The landlord did not deny tenancy; the tenant can stay but must remove the dog, and it's not discriminatory. There is no proof that the dog qualifies in the true sense.

SUBMISSIONS OF THE TENANT'S REPRESENTATIVE:

Section 18 of the *Residential Tenancy Act* states that a tenancy agreement may include terms or conditions subject to the *Guide and Service Dog Act* which says Sec 1.1 – For certainty nothing in this Act nor anything done under the Act abrogates or derogates from the Human Rights Code.

The BC Human Rights Code at Section 10 regarding discrimination in a tenancy specifies that a person must not deny to a person or class of persons the right to occupy as a tenant space that is represented as being available for the occupancy by a tenant or (b) discriminate against a person or class of persons regarding a term or condition of tenancy because of physical or mental disability. Depression is recognized as a disability under the Human Rights Code.

The *Guide and Service Dog Act* only helps with physical, not emotional people. Since the tenant is not blind or physically disabled he cannot get certification under the *Guide and Service Dog Act*, except that Section 1.1 says that nothing goes over the Human Rights code and the landlord cannot discriminate against a tenancy due to a disability. The landlord is forcing him to stop treatment or be evicted, and being evicted for treating his depression would cause further harm to the tenant.

With respect to a material term, the Residential Policy Guideline states that a material term is determined at the hearing, and the hearing should focus on the term and scheme of the tenancy agreement with consequences. However, Term 54 of the tenancy agreement allows certain tenants to be granted exemption from pet clauses. If the landlord is willing to make such exceptions, certainly it could be made for the tenant.

The tenancy agreement was signed by the tenant on January 13, 2022 and the Addendum including the paragraph 52 pet prohibition on January 17, 2022. Surely it should be set out front and centre. The pet clauses are split up into 3 areas making it difficult to see that it is a material term.

The term under clause 52 is unconscionable in that it states that the tenant is responsible for all costs, legal fees and other expenses incurred by the landlord respecting a breach and that part should be struck.

Analysis

Firstly, where a tenant disputes a notice to end a tenancy given by a landlord, the onus is on the landlord to establish that it was given in accordance with the *Residential*

Tenancy Act, which can include the reason(s) for issuing it. I have reviewed the One Month Notice to End Tenancy for Cause and I find that it is in the approved form and contains information required by the *Act*.

I have reviewed all of the evidence and the *Guide Dog and Service Dog Act*. The tenant does not dispute that the tenant's dog does not and will not qualify as a Guide Dog or Service Dog. Section 18 of the *Residential Tenancy Act* states that tenancy agreements may include terms or conditions prohibiting pets, and this one certainly does.

The Craigslist advertisement clearly states: "Absolutely NO Pets and NO Smoking/Vaping permitted on property (including balcony and common areas)!"

The Application for Tenancy contains an applicant's statements, one of which states that the tenant does not own any pets.

Paragraph 17 of the tenancy agreement states: "Pets. 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..."

Paragraph 49 of the tenancy agreement states: "...NO Pets permitted in suite or on Property at any time – No visiting pets allowed."

Paragraph 52 of the Addendum, states: Notwithstanding Clause 17 of the Agreement, the Tenant is prohibited from keeping or allowing any pet and/or animal in the rental unit or anywhere on the residential premises at any time. Failure to comply with this Clause constitutes a breach of a material term of this Agreement for which the Landlord may exercise all remedies available under the Act, including but not limited to: (a) requiring the Tenant to remove the pet or animal from the rental unit or residential premises at the Tenant's sole cost and expense on 30 days' written notice by the Landlord; and (b) serving a notice to end tenancy in accordance with the Act..." It is initialled by the landlord and the tenant.

Paragraph 54 of the Addendum states: GRANDFATHERED AGREEMENTS "The Tenant acknowledges and agrees that the residential premises are transitioning to a no-pets / no-smoking premises. During this period of transition, tenants operating under previous tenancy agreements that permitted pets and/or permitted smoking are grandfathered from the pet prohibition and smoking prohibition contained in this Agreement. Such permissions are governed by the Act and in accordance with the terms of the grandfathered tenancy agreements.

All of those clauses were carefully covered by the Law Student representing the tenant. However, I find that this is a clear case of asking for forgiveness rather than permission, and is not a case of discrimination. Pursuant to Section 18 of the *Act*, a landlord is permitted to include a term prohibiting pets. Since the tenant's emotional support dog does not qualify under the *Guide Dog and Service Dog Act*, the landlord is not obligated to allow it.

A material term is a term that is so important that if the term was not agreed to the tenancy agreement would not have been entered into. Considering all of the clauses in the tenancy agreement and Addendum, I find that no pets is a material term of the tenancy agreement.

In order to end a tenancy for breach of a material term, the onus is on the landlord to inform the tenant in writing that there is a problem, that the problem is a breach of a material term of the tenancy agreement, that the problem must be rectified by a deadline included in the letter, which must be reasonable, and if not corrected by the deadline, the landlord will end the tenancy. In this case, the landlord sent emails and letters to the tenant as well as 2 breach letters, which included all of the required information. The tenant did not remove the dog.

In the circumstances, I dismiss the tenant's application to cancel the Notice.

The *Act* also states that where I dismiss a tenant's application to cancel a notice to end a tenancy given by a landlord, I must grant an Order of Possession in favour of the landlord, so long as the Notice given is in the approved form. Having found that it is in the approved form, I grant an Order of Possession in favour of the landlord. Since the effective date of vacancy has passed, I grant the Order of Possession effective on 2 days notice to the tenant.

The tenant has not satisfied me that the landlord has failed to comply with the *Act* or the tenancy agreement, and I dismiss the tenant's application for an order that the landlord comply with the *Act*, regulation or tenancy agreement.

Since the tenant has not been successful with the application, the tenant is not entitled to recovery of the filing fee.

Conclusion

For the reasons set out above, the tenant's application is hereby dismissed in its entirety without leave to reapply.

I hereby grant an Order of Possession in favour of the landlord effective on 2 days notice to the tenant.

This order is final and binding and may be enforced.

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: August 15, 2022

Residential Tenancy Branch