



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the *Act*) for cancellation of a 10 Day Notice to End Tenancy for Unpaid Rent, pursuant to section 46.

This hearing originally convened on January 17, 2023. At the initial hearing landlord agent T.T. (the "agent") and the tenant's daughter attended. The tenant's daughter requested an adjournment because the tenant was unable to attend due to a medical appointment. In the hearing I granted the adjournment and both parties agreed to adjourn the hearing to January 23, 2023 at 11:00 a.m. In the hearing I provided both parties with the conference codes for the January 23, 2023 hearing. An Interim Decision was not drafted.

In the January 23, 2023 hearing the tenant, the agent and a second landlord agent (the "second agent") attended the hearing and were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

In the second hearing both parties were advised that Rule 6.11 of the Residential Tenancy Branch Rules of Procedure prohibits the recording of dispute resolution hearings. Both parties testified that they were not recording this dispute resolution hearing.

Both parties confirmed their email addresses for service of this decision.

The tenant testified that she served the landlord with this application for dispute resolution and evidence by hand delivering them to a landlord employee. The tenant testified that her application for dispute resolution was also served on the landlord via regular mail. The tenant testified that she did not know the date the above documents

were served. No proof of service documents were entered into evidence. The agent testified that the landlord did not receive the tenant's application for dispute resolution or evidence.

Rule 3.1 of the Residential Tenancy Branch Rules of Procedure (the "Rules") states:

The applicant must, within three days of the Notice of Dispute Resolution Proceeding Package being made available by the Residential Tenancy Branch, serve each respondent with copies of all of the following:

- a) the Notice of Dispute Resolution Proceeding provided to the applicant by the Residential Tenancy Branch, which includes the Application for Dispute Resolution;
- b) the Respondent Instructions for Dispute Resolution;
- c) the dispute resolution process fact sheet (RTB-114) or direct request process fact sheet (RTB-130) provided by the Residential Tenancy Branch; and
- d) any other evidence submitted to the Residential Tenancy Branch directly or through a Service BC Office with the Application for Dispute Resolution, in accordance with Rule 2.5 [Documents that must be submitted with an Application for Dispute Resolution].

Rule 3.5 of the Rules states:

At the hearing, the applicant must be prepared to demonstrate to the satisfaction of the arbitrator that each respondent was served with the Notice of Dispute Resolution Proceeding Package and all evidence as required by the Act and these Rules of Procedure.

I find that the tenant has not proved, on a balance of probabilities, that her application for dispute resolution or evidence were served on the landlord as no proof of service documents were entered into evidence. I therefore dismiss the tenant's application for dispute resolution with leave to reapply and I exclude from consideration the tenant's evidence, for failure to prove service in accordance with Rule 3.5.

The agent testified that the tenant was served with the landlord's evidence via registered mail on December 30, 2022. The tenant testified that she received the landlord's evidence shortly thereafter. I find that the tenant was served with the landlord's evidence in accordance with section 89 of the *Act*. I find that the landlord's evidence is accepted for consideration.

Preliminary Issue- Amendment

In the hearing the landlord and the tenant presented evidence pertaining to a One Month Notice to End Tenancy for Cause. Neither party provided any evidence regarding a 10 Day Notice to End Tenancy for Unpaid rent. A One Month Notice to End Tenancy for Cause was entered into evidence A 10 Day Notice to End Tenancy for Unpaid Rent was not entered into evidence.

The tenant's application for dispute resolution states that the tenant is applying to cancel a 10 Day Notice to End Tenancy for Unpaid Rent. Since a full hearing was conducted on the legitimacy of a One Month Notice to End Tenancy for Cause and neither party provided any testimony on a 10 Day Notice to End Tenancy for Unpaid Rent, I find, on a balance of probabilities, that the tenant intended on filing an application to cancel a One Month Notice to End Tenancy for Cause, and selected the wrong box in the application form.

In these circumstances I find that both parties were aware that issue being determined between the parties was whether or not the One Month Notice to End Tenancy for Cause should be upheld. I find that it is therefore reasonable to amend the tenant's application for dispute resolution to include a claim to cancel the One Month Notice to End Tenancy for Cause and to remove the tenant's claim to cancel a 10 Day Notice to End Tenancy for Unpaid Rent. Pursuant to section 64 of the *Act*, I so amend.

Issue to be Decided

Is the tenant entitled to cancellation of the One Month Notice to End Tenancy for Cause, pursuant to section 47?

Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of both parties, not all details of their respective submissions and arguments are reproduced here. The relevant and important aspects of the tenant's and landlord's claims and my findings are set out below.

The tenant testified that this tenancy began on December 15, 2021. The agent testified that this tenancy began on December 1, 2021. Both parties agree that the market rent for the subject rental property is \$1,450.00 per month and that the subject rental property is subsidized housing and the tenant's monthly contribution is \$474.00 due on the first day of each month. A security deposit of \$725.00 was paid by the tenant to the landlord. A written tenancy agreement was signed by both parties and a copy was submitted for this application.

The agent testified that the tenant was served with a One Month Notice to End Tenancy for Cause (the "Notice") via registered mail on August 18, 2022. The agent entered into evidence a Canada Post registered mail receipt stating same and a tracking report which states that the above package was delivered on August 27, 2022. The tenant testified that she received the Notice in her mailbox in August but could not recall on what date.

The Notice was entered into evidence, is signed by the landlord, is dated August 15, 2022, gives the address of the rental unit, states that the effect date of the notice is September 30, 2022, is in the approved form, #RTB-33, and states the following grounds for ending the tenancy:

- Tenant or a person permitted on the property by the tenant has:
 - significantly interfered with or unreasonably disturbed another occupant or the landlord;
 - seriously jeopardized the health or safety or lawful right of another occupant or the landlord;
- Breach of material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so;

The agent testified that dogs are not permitted on the subject rental property unless they are a registered service dog. The agent testified that the above is set out at section 13 of the tenancy agreement which states:

13. Pets:

Having regard to the enjoyment, quiet possession and health requirements of other Tenants or guests of the residential property or premises, as well as the interest of the Landlord in maintaining the premises, the parties agree as follows:

- (a) the Tenant may have continuous charge of aquarium fish (limited to one aquarium - maximum 15 gallons), or one turtle, or one small caged bird other than a parrot or macaw, or one caged hamster, or one caged guinea pig ONLY, without obtaining prior written permission from the Landlord; and
- (b) the Tenant must not have continuous charge of any other animal except one indoor cat, if the Tenant has obtained the **prior written permission** of the Landlord, and such permission must not be unreasonably refused.
- (c) No dogs are permitted on the premises (excluding registered aid dogs).

If an animal in the possession of the Tenant unreasonably disturbs other tenants in the residential property or adjoining property, or if the animal becomes a risk to the health of other tenants, the Landlord may give notice to the Tenant to end the disturbance or the health risk, and if the Tenant fails to end the disturbance or the health risk, the Landlord may revoke in writing the Landlord's permission to keep the animal. If any damage occurs of any nature whatsoever caused by the animal, the Tenant is liable for such damage and must pay the Landlord sufficient monies to compensate the Landlord in respect of damage, expense, legal fees, or any other reasonable costs paid by the Landlord, and the Landlord may revoke in writing the Landlord's permission to keep the animal. If the Landlord revokes in writing the Landlord's permission, or if the Landlord gives the Tenant notice that permission is required and the Tenant has not obtained that permission, and the Tenant fails to remove the animal within seven (7) days of receiving that notice, the Landlord may terminate this Agreement immediately and make an appropriate claim against the Tenant for compensation. CARPET REPLACEMENT: If damage is caused to carpet and or underlay by an animal, including urinating on the carpet or through the underlay, the Tenant is responsible for the cost of replacing the carpet and or the underlay.

Having regard to the potential nuisance, noise factor and mess, the Tenant must not encourage or feed wild birds or animals at or near the residential property.

The agent testified that the tenant has a dog, contrary to the tenancy agreement. The agent testified that the tenant was provided with many opportunities to re-home the dog but did not, and so the Notice was served on the tenant.

The agent testified that the tenant filled out an eligibility assessment before the start of this tenancy in which she stated that she had no pets. The eligibility assessment described above was entered into evidence.

The agent testified that the landlord only learned that the tenant had a dog and two cats when a reference check with a previous landlord was completed. A reference check form indicating that the tenant has a dog and two cats was entered into evidence.

The agent testified that the tenant was then asked to fill out the eligibility form again and indicated that she has pets but is willing to get rid of them. The second eligibility form stating same was entered into evidence.

The agent testified that when the tenant moved in, she brought her pets, including her dog, with her. The agent testified that the landlord received a complaint from another tenant about the tenant's dog barking in the subject rental property. An email record of the complaint dated December 16, 2021 was entered into evidence. The agent testified that the tenant told the landlord that the issue would be resolved.

The agent testified that on January 6, 2022 the landlord received a complaint from another tenant about a large dog residing in the subject rental property and keeping the complainant tenants up all hours of the night. The January 6, 2022 complaint email was entered into evidence.

The agent testified that the landlord received another report on January 27, 2022 of a dog living in the subject rental property. The report was entered into evidence.

The agent testified that the caretaker reported the tenant's daughter walking a dog near the subject rental property and that tenants have heard barking from the subject rental property. An email from the caretaker stating same dated February 1, 2022 was entered into evidence.

The agent testified that the tenant was sent a breach letter regarding the dog on the property on February 3, 2022. The breach letter was entered into evidence and states:

[The landlord's] pet policy was discussed when signing your Tenancy Agreement with [landlord] staff, [name redacted] on November 9, 2021. The office is also aware that on December 16th, 2021 during the fire alarm testing, you were informed by Caretaking staff that dogs, including visiting dogs, were not permitted on site at [subject rental property]

However, [the landlord] has received reports that you continue to have a dog living in your unit. Additionally, the dog was seen on property on February 1, 2022.

Dogs (with the exception of dogs with British Columbia Guide Dog and Service Dog Certification) are not permitted on the property at [the subject rental property] at any time. Continuing to have a dog at [the subject rental property] is a breach of Article #13 of Addendum A of your Tenancy Agreement.

If your dog is a Certified Guide Dog or -Service Dog, we require that you provide this office with a copy of the certification by February 11th, 2022.

If your dog is not a Certified Guide Dog or Service Dog, you must relocate it and provide our office with notice in writing that you have done so by February 11th, 2022. Failure to rectify this breach may result in action being taken against your tenancy.

The agent testified that the landlord received another report about the tenant's dog on February 4, 2022. The February 4, 2022 report was entered into evidence.

The agent testified that the tenant responded to the February 3, 2022 breach letter on February 11, 2022 via email. The February 11, 2022 email was entered into evidence and states:

My Dog Daizy has provided emotional support, protection and safety. I was in an extremely abusive relationship and have CPTSD as a result. My dog was provided to me through council from the profession i was seeing to help get past some of these issues. As I truly of having daizy I was able to go back to work and slowly but surely am getting back to "normal" life. I have been waiting almost 18 years to get into affordable housing with my daughter and am not seeing how having our home at risk or having myself incapable of functioning again will provide any type of good for my thriving almost adult child. I am absolutely willing to relocate and will provide any further

documentation if needed. Please please do not make us move again this is the first time in almost 10 years my daughter and I have felt at ease on so many levels. I am proud to say my daughter is graduating this year she is truly becoming an amazing individual and I know the loss of our Daizy and our stability would hinder that for her.

The agent testified that attached to the above email were two letters from a doctor in Florida. The first letter is dated December 17, 2021 and states:

Dear Daizy Bubba,

I'm the licensed doctor who reviewed your ESA request. Your high stress levels have allowed for the approval to have an Emotional Support Animal.

Enclosed please find your ESA approval letters for both housing and travel.

The ESA Approval is valid for one full year from the date listed on this letter.

The second letter is dated December 17, 2021 and states:

I am a licensed doctor who has evaluated the emotional profile of Daizy Bubba and determined that Daizy qualifies for an Emotional Support Animal (ESA). Daizy is experiencing high levels of stress. Daizy's high stress levels have imposed limitations in quality of life and daily functioning. Daizy's distress is imposing a negative influence over lifestyle in light of Daizy's disruptive stress level, I believe the stress is such that Daizy Bubba will benefit from having an Emotional Support Animal. The animal will help provide a safe and more consistent emotional support system. Having Emotional Support Animal will provide Daizy a constructive soothing stress management solution in order to help keep calmness and to help prevent any possibility of escalating stress that could cause further complications to overall well-being.

The emotional distress that Daizy experiences is such, that I have recommended their pet be recognized as an "Emotional Support Animal" and be allowed to live with Daizy under the United States Fair Housing Amendment Act of 1988....

The agent testified that the landlord questions the validity of the above letters because the letters appear to come from a jurisdiction outside of Canada and because the dog's name, Daizy, is the name of the person who qualifies for the emotional support animal.

The tenant did not provide any testimony responding to the landlord's above concerns about the legitimacy of the December 17, 2021 letters.

The agent testified that the landlord responded to the tenant's February 11, 2022 email on February 28, 2022. The email was entered into evidence and questioned the legitimacy of the December 17, 2021 letters and stated that only British Columbia Guide and Service Dogs with proper certification are permitted on the property.

The agent testified that on March 3, 2022 the landlord informed the tenant via email that she had until March 31, 2022 to rehome the dog Daizy. The above email was entered into evidence.

The agent testified that the caretaker completed an inspection of the subject rental property on March 17, 2022 and found that the dog was still residing at the subject rental property as was a cat. An email from the caretaker stating same was entered into evidence.

The agent testified that on March 23, 2022 the tenant was sent a breach letter regarding the cat found at the property. The March 23, 2022 letter was entered into evidence. The agent testified that the dog was not mentioned in the above letter because the landlord had given the tenant until March 31, 2022 to re-home the dog.

The agent testified that on March 31, 2022 a landlord staff person spoke with the tenant to determine if the tenant's dog was re-homed. The tenant informed the agent that the dog is being rehomed "tomorrow". Notes from the above conversation were entered into evidence.

The agent testified that on May 9, 2022 the caretaker reported seeing the tenant and her dog on the subject rental property. The caretaker asked the tenant about the dog and she said the dog was just visiting. Emails from the caretaker dated May 9, 2022 stating same were entered into evidence.

The agent testified that on May 31, 2022 the tenant was sent a final breach letter that states:

It came to [the landlord's] attention in February 2022 that you had a dog in your unit. A letter dated February 3, 2022 was sent to you informing you that having a dog in your unit was a breach of Article 13 of your Tenancy

Agreement. You were given until February 11, 2022 to either provide [the landlord] with the required documentation for a certified guide dog or to have the dog rehomed.

[Landlord] staff then entered your unit in March 2022 to do the annual unit inspections and it was discovered that you still had the dog in your unit as well as a cat that [the landlord] was not aware of. A second letter, dated March 23, 2022 was sent to you which reiterated:

"Rotary is a no pets building, outside of specific caged animals specifically listed in the tenancy agreement. This would have been discussed during initial screening for the unit and at the signing of the Tenancy Agreement.

Article #13 of Addendum A of your Tenancy Agreement states, in part, that:

"(a) the Tenant may have continuous charge of aquarium fish (limited to one aquarium), or one turtle, or one small caged bird other than a parrot or macaw, one caged hamster, or one caged guinea pig **ONLY** without obtaining prior written permission from the Landlord;"

Having a cat at Rotary House is a violation of your Tenancy Agreement. This letter will serve as notice that you must rectify this breach of your Tenancy Agreement by removing the cat from the premises by Friday, April 15, 2022."

[Landlord] staff person [name redacted] followed up with you, about your plans to rehome the cat and sent an email, April 23, requesting that you confirm with [the landlord] once you had rehomed the cat at the end of April.

It has recently come to our attention that you still have the dog in your unit and possibly the cat as you did not confirm that the cat has been rehomed.

As this has been an ongoing issue since February 2022, and [the landlord] has had numerous communications, via email and breach letters, with you in regards to these Breaches. Please be advised that this **final breach letter**.

Upon receipt of this letter any animals in the unit must be rehomed immediately. Any further reports of a dog or a cat being in, or visiting, your unit

will result in [the landlord] serving a notice to end tenancy. Please confirm in writing that there are no pets in your unit and none will visit.

Additionally, staff reported that a dog associated with your unit was reported on site, off leash. Any impact on staff safety could result in [the landlord] seeking an expedited end to your tenancy.

The agent testified that on August 11, 2022 the landlord received a complaint about a dog barking at the subject rental property multiple times between June 10, 2022 and July 21, 2022. The August 11, 2022 email complaint was entered into evidence.

The agent testified that after the above complaint was received, the tenant was served with the Notice.

The agent testified that in September 2022 another tenant complained to a landlord staff member about the tenant's dog. The staff member's email reporting the above verbal complaint was entered into evidence and is dated September 9, 2022.

The agent testified that other tenants reported the tenant's dog on the property in October 2022. Three e-mail reports from October 2022 were entered into evidence.

The agent testified that as of December 30, 2022 the tenant's dog was still residing in the subject rental property. The agent submitted that a repair person entered into the subject rental property to repair an emergency leak in the kitchen and heard a dog barking from the back bedroom in the subject rental property. An email dated December 30, 2022 from the repair person stating same was entered into evidence.

The agent testified that the tenant's dog has caused a significant loss of quiet enjoyment to the tenants living around the tenant. The agent testified that the tenant has refused to work with the landlord and left them with no other option than to seek an eviction.

The tenant testified that she re-homed her dog at the end of March 2022. The tenant testified that the last time her dog came for a visit was on December 30, 2022 when the repair person attended.

The tenant testified that her dog now lives with her ex who lives nearby. The tenant testified that she still walks her dog and visits with her dog. The tenant did not call any witnesses and no evidence from the tenant was accepted for consideration.

The second agent submitted that if the landlord is successful in this application for dispute resolution, the landlord is seeking an Order of Possession for February 28, 2023 as long as the tenant's dog is not permitted on the property.

Analysis

Based on the testimony of both parties, I find that the Notice was served on the tenant in accordance with section 88 of the *Act*.

Section 47(1)(d)(i) and section 47(1)(d)(ii) of the *Act* states:

47 (1)A landlord may end a tenancy by giving notice to end the tenancy if one or more of the following applies:

(d)the tenant or a person permitted on the residential property by the tenant has

(i)significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property,

(ii)seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant, or

Section 47(1)((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;

Residential Tenancy Policy Guideline #8 states in part:

To end a tenancy agreement for breach of a material term the party alleging a breach – whether landlord or tenant – must inform the other party in writing:

- that there is a problem;

- that they believe the problem is a breach of a material term of the tenancy agreement;
- that the problem must be fixed by a deadline included in the letter, and that the deadline be reasonable; and
- that if the problem is not fixed by the deadline, the party will end the tenancy.

Where a party gives written notice ending a tenancy agreement on the basis that the other has breached a material term of the tenancy agreement, and a dispute arises as a result of this action, the party alleging the breach bears the burden of proof.

Based on the communications between the parties entered into evidence by the landlord I find that the landlord clearly and repeatedly informed the tenant that there was a problem with her having a dog at the subject rental property and that the continued presence of a dog jeopardized her tenancy. I find that while the landlord did not expressly state that the breach of section 13 of the tenancy agreement identified in the first and third breach letters was a material term, I find that since the landlord informed the tenant that her tenancy was in jeopardy, this position was made clear to the tenant. I find that the landlord gave the tenant multiple reasonable deadlines to rehome the tenant's dog and that the tenant failed to do so.

The tenant testified that she re-homed her dog in March of 2022. I find that the complaints and reports of the tenant's dog at the subject rental property after this date contradict this testimony. I do not find the tenant's testimony to be credible and where there tenant's version of events different with that of the agent, I prefer the testimony of the agent. I find on a balance of probabilities, that the tenant did not re-home the dog in accordance with the breach letters and that the dog resided in the subject rental property until at least December 30, 2022 and likely still does.

I find that the tenant breached section 13 of the tenancy agreement by refusing to re-home her dog. I find that the landlord made clear, by way of two separate breach letters, that section 13 of the tenancy agreement was a material term and that if the tenant did not comply with it, the landlord would serve her with a notice to end tenancy. I find that the multiple extensions to the deadline to re-home the dog were very reasonable. Pursuant to section 47(1)(h) of the *Act* I uphold the notice.

I concur with the agent's concerns with the legitimacy of the December 17, 2021 letters. I find the jurisdiction issue and the mistake with the name of the dog in place of the name of the tenant to evidence their fraudulent origins. I find that the tenant has not proved that her dog is an accredited service dog.

I also find that the tenant's dog significantly interfered with or unreasonably disturbed other occupants of the subject rental building by barking. This finding is based on the numerous reports and complaints of the tenant's dog barking. Pursuant to section 47(1)(d)(i) of the *Act* I uphold the notice.

Upon review of the Notice I find that it meets the form and content requirements of section 52 of the *Act* because it:

- is signed and dated by the landlord,
- gives the address of the subject rental property,
- states the effective date of the notice,
- states the ground for ending the tenancy, and
- is in the approved form, RTB Form #33.

Section 55(1) of the *Act* states that 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 find that since the Notice complies with section 52 of the *Act*, the tenant's application to cancel the Notice was dismissed and the Notice was upheld, the landlord is entitled to an Order of Possession effective February 28, 2023.

I order the tenant to remove the tenant's dog from the subject rental property immediately.

Conclusion

Pursuant to section 55 of the *Act*, I grant an Order of Possession to the landlords effective at **1:00 p.m. on February 28, 2023**, which should be served on the tenant.

Should the tenant fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

I order the tenant to remove the tenant's dog from the subject rental property immediately.

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: January 25, 2023

Residential Tenancy Branch