



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: CNC, OLC, MNDC, FF

Introduction

This hearing dealt with an application by the tenant pursuant to the *Residential Tenancy Act* to cancel a notice to end tenancy for cause. The tenant also applied for an order directing the landlord to comply with the *Act*, for a monetary order for the cost of mailing and for the recovery of the filing fee. Both parties attended the hearing and were given full opportunity to present evidence and make submissions. The parties acknowledged receipt of evidence submitted by the other and gave affirmed testimony.

RTB Rules of Procedure 2.3 states that if in the course of a dispute resolution proceeding, the Arbitrator determines that it is appropriate to do so, the Arbitrator may dismiss unrelated disputes contained in a single application with or without leave to reapply. In this regard I find the tenant has applied for an order for the landlord to comply with the *Act* and for a monetary order. As these sections of the tenant's application are unrelated to the main section, which is to cancel the one-month notice, I dismiss these sections of the tenant's application, with leave to reapply.

Accordingly, this hearing only dealt with the tenant's application to set aside the notice to end tenancy and for the recovery of the filing fee.

Issues to be decided

Is the landlord entitled to an order of possession? Is the tenant entitled to recover the filing fee?

Background and Evidence

The tenancy started on December 01, 2021. The monthly rent is \$1,550.00 due in advance on the first of each month. Prior to moving in the tenant paid a security deposit of \$775.00.

The landlord testified that on October 30, 2021, the tenant applied to rent an apartment. The form that was filled out and signed by the tenant stated that landlord's approval was required for a pet. The tenant stated that she did not have a pet at that time, so she just filled out "N/A". The landlord stated that other than service dogs, no other dogs are permitted to reside in the building.

In June 2022, the tenant acquired a pet dog. She agreed that she did not seek the landlord's permission to get a pet dog. The tenant stated that the reason for not seeking permission, was that her tenancy agreement did not state that she needed permission to keep a pet.

On October 03, 2022, the landlord met the tenant walking her dog and asked her if the dog belonged to her. The tenant replied in the affirmative. The landlord also asked the tenant if the dog was a service dog and the tenant replied that the dog was "in training".

Later that day the landlord wrote a letter to the tenant informing her that if she wanted the dog to reside in the building, she would have to provide service dog certification for the dog, by October 18, 2022, or seek alternative accommodation for the dog. During the hearing the tenant stated that her dog was being trained but was not in a formal training program to be certified as a service dog.

The tenant did not provide the landlord with the requested service dog certification by October 18, 2022. On October 19, 2022, the landlord served the tenant with a one month notice to end tenancy for breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so. The tenant disputed the notice in a timely manner. The effective date of the notice is November 30, 2022.

The tenant stated that at the start of the tenancy she did not have a dog and there was no term in the tenancy agreement that stated that she was required to get permission to keep a pet dog.

The tenant agreed that she signed the application to rent a unit which stated that landlord permission was required to keep a pet dog, but she added that the landlord did not give her a copy of her application and that she forgot that there was such a term, mentioned in the application. The tenant also added that the application is not a contract because it is signed by the tenant only. The landlord has not signed her application.

The tenant stated that her understanding was that she did not have to acquire the permission of the landlord to keep a pet.

The landlord stated that it is his practice to inform new tenants that only service animals were permitted in the building and that tenants are required to obtain landlord's approval to keep a pet. The landlord stated that he did not specifically remember informing the tenant but since it was his practice to inform new tenants about this requirement, he probably had done so. At the time of the hearing, the tenant agreed that her pet dog still resided with her in the rental unit.

Analysis

The tenant's defence is as follows:

1. The landlord did not sign her application for tenancy and therefore it was not a contract that she was bound by.
2. The tenant forgot that a term of the application for tenancy, required landlord approval to acquire a pet. The landlord did not give her a copy of the application.
3. The tenancy agreement does not say that a tenant must have landlord's approval prior to getting a pet nor does it prohibit pets.
4. The landlord has no grounds to end the tenancy for a material term that is not in the tenancy agreement
5. When the tenant moved into the building, the landlord did not inform the tenant that only service animals were permitted in the building.
6. The landlord did not inform the tenant that she needed landlord's approval to keep a pet dog.

Based on the testimony of both parties, I find that when the tenant signed the application for tenancy form, she was informed of the need for landlord's approval to keep a pet dog. I further find that that the tenant deliberately misled the landlord when she told the landlord that the dog was "in training".

This led the landlord to believe that the dog was in training to be a service dog. The landlord only found out that the dog was not training to be a service dog, when the tenant failed to provide supply proof of certification.

I find on a balance of probabilities, that it is more likely than not that the tenant is aware that a pet deposit must be paid if a tenant has a pet, but she did not make any effort to pay one.

Section 20(c) of the *Residential Tenancy Act* states as follows:

A landlord must not require a pet damage deposit at any time other than

(i) when the landlord and tenant enter into the tenancy agreement, or

(ii) if the tenant acquires a pet during the term of a tenancy agreement, when the landlord agrees that the tenant may keep the pet on the residential property.

As per section 20(c)(ii) the landlord may collect a pet deposit if the tenant acquires a pet during the term of a tenancy agreement, when the landlord agrees that the tenant may keep the pet on the residential property.

Section 23(2) of the *Residential Tenancy Act* addresses the condition inspection that is required to be carried out at the start of tenancy or new pet

23 (1) The landlord and tenant together must inspect the condition of the rental unit on the day the tenant is entitled to possession of the rental unit or on another mutually agreed day.

(2) The landlord and tenant together must inspect the condition of the rental unit on or before the day the tenant starts keeping a pet or on another mutually agreed day, if

(a) the landlord permits the tenant to keep a pet on the residential property after the start of a tenancy, and

(b) a previous inspection was not completed under subsection (1)

Section 23(2) clearly states that the parties must inspect the condition of the rental unit on or before the day the tenant starts keeping a pet if the landlord permits the tenant to keep a pet on the residential property after the start of tenancy.

Based on the testimonies of both parties and sections 20 and 23 of the *Act* I find that the tenant was required to inform the landlord and obtain permission to keep a pet. I further find on a balance of probabilities, that it is more likely than not that the tenant was aware of the need to get permission to keep a pet.

The tenant chose to rely on the agreement which only addresses a pet deposit and does not contain a term requiring the tenant to obtain landlord's approval to keep a pet.

In this case, I find that the landlord served the tenant with a notice to end tenancy that complies with section 52 (form and content of notice to end tenancy). I have determined that the tenant did not obtain permission to keep a dog, nor did she make efforts to report the presence of the dog or pay a pet deposit. Therefore, I must uphold the notice to end tenancy.

Under the provisions of section 55, I must issue an order of possession when I have upheld a notice to end tenancy. Accordingly, I so order. Should the tenant fail to comply with the order, the order may be filed in the Supreme Court of British Columbia and enforced as an order of that Court.

During the hearing, the tenant referred her upcoming out of Province trip in May 2023 and wanted the landlord to allow her to sublet the unit. Based on the tenant's planned trip, the landlord agreed to allow the tenancy to continue to April 30, 2023, in the event the notice to end tenancy is upheld. The tenant also agreed to allow the landlord to show the rental unit to prospective tenants from March 25, 2023.

The tenant is unsuccessful in her application and must therefore bear the cost of filing this application.

Conclusion

I grant the landlord an order of possession effective by 1:00 pm on April 30, 2023.

The remainder of the tenant's application is dismissed with leave to reapply.

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 09, 2023

Residential Tenancy Branch