



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC

Introduction

This hearing was convened by way of conference call in repose to the tenant's application to cancel a One Month Notice to End Tenancy for cause.

The tenant, the tenants advocate, the tenant's witnesses and the landlords attended the conference call hearing. The parties attending gave sworn testimony and were given the opportunity to cross exam each other and witnesses on their evidence. The landlord and tenant provided documentary evidence to the Residential Tenancy Branch and to the other party in advance of this hearing. All evidence and testimony of the parties has been reviewed and are considered in this decision.

Issue(s) to be Decided

Is the tenant entitled to have the One Month Notice to End Tenancy cancelled?

Background and Evidence

Both parties agree that this month to month tenancy started on November 15, 2010. The tenant pays a subsidized rent of \$475.00 per month and rent is due on the first day of each month.

The landlord testifies that the tenant has kept a dog in her unit. The tenant was sent a breach letter on June 16, 2011 which informed the tenant that the landlord considers that section 22 of their tenancy agreement concerning pets to be a material term of the tenancy

agreement. The breach letter goes on to inform the tenant that she had initialled this clause of the tenancy agreement and was aware that no pets were allowed at the unit and it is not appropriate for the tenant to look after a dog for someone else in her unit. The landlord testifies that recently they had received reports from other tenants that the tenant was looking after a dog and was keeping another dog on the premises.

The landlord has provided a copy of the tenancy agreement which shows that section 22 of that agreement states: Pets shall not be kept on or about the premises or property, specifically cats and dogs.

The tenant was also informed in the breach letter that unless the tenant rectifies this breach by June 29, 2011 the landlord will serve the tenant with a One Month Notice to End Tenancy.

The landlord testifies that the tenant's dog does not have a Guide dog classification and all tenants with pets living in the complex are also being served with breach letters or Notices to End Tenancy. The landlord testifies that after the tenant was served the breach letter in June, 2011 the tenant informed the landlord that the dog would no longer be kept at her unit.

The landlord requests that the One Month Notice is upheld and the landlord seeks an Order of Possession. The landlord states they are willing to extend the time frame for a possession date to July 31, 2012. The landlord also states that if the tenant agrees to find a new home for the dog then no further action will be taken. The tenant agrees to this extension if the tenant is unsuccessful with her application.

The tenant's advocate states that the tenant does not think that keeping her dog in her unit this is a breach of a material term of a tenancy agreement as there are lots of animals living in units at the complex. The tenant's advocate states as the landlord has tolerated tenants keeping pets they have waived their right to enforcing this term of the tenancy agreement.

The tenants advocate calls the tenants first witness RD and ask the witness to clarify his position in the complex. The witness replies that he has the grounds contract in the complex to take care of the grounds. The witness testifies that he has sent in a letter in support of the tenant and the tenants dog and states in his letter that the tenants dog has caused no harm to the interior or exterior of the tenants unit. RD states that the tenant has picked up any dog mess within three or four days and has done a wonderful job in sprucing up her back patio area and the garden area behind her unit. RD also testifies that there are at least five or six other pets living on the complex since RD has been working there.

The landlord cross examines the witness RD and asks RD if he thinks it is acceptable for the tenant to leave dog mess laying around for three or four days if he had a young child. RD replies that the tenant does her best to pick it up quickly and RD states he has seen much worse from some of the other dogs living in the complex. The landlord asks RD if he is aware that other tenants have also been sent Notices because of their pets. RD states that he is not aware of this.

The tenant calls her second witness SH. The witness testifies that she has visited the tenants unit at least twice a week since 2011. SH testifies that there are a lot of animals such as dogs, playing on the grass and SH sees the same dogs and cats frequently in the complex including cats sitting in the windows of other units.

The landlord declines to cross examine this witness.

The tenant calls her third witness RC. RC testifies that she has known the tenant for a few months and works with the tenant helping the tenant four times a week. RC testifies that she has seen many cats and dogs outside in the complex and has seen cats sitting in other tenants windows. RC testifies that no one really acknowledges the pets and do not seem to be surprised to see animals in the complex.

The landlord declines to cross examine this witness.

The tenant testifies that she had her small dog, a miniature Chihuahua, before she moved into her unit. At that time the tenant states she made arrangements for her mother to look after her dog. The tenant states as her mother travels backwards and forwards to Vancouver her mother would leave the dog with the tenant to care for and then the tenant's mother would pick the dog up on her return.

The tenant testifies that she received the breach letter from the landlord in June 2011 informing the tenant that the tenant could not have a dog. The tenant testifies that she called the landlord and told the landlord that the dog was only visiting her and her daughter also brought her dog to visit. The tenant testifies that she thought that was the end to the matter.

The tenant testifies that in September she became very ill and she started treatment. The tenant states as a lot of other tenants had pets at the complex the tenant was under the impression that it was allowed. The tenant testifies that her dog started staying for longer periods when the tenant became sick at Christmas. The tenant explains that her dog is an indoor dog and there was an occasion when the dog did get out and messed in her neighbour's yard. The tenant states she did clean this up and has also cleaned up after other tenants' cats and dogs. The tenant testifies that since her dog has returned to live with her in her unit for longer periods she has not tried to hide the dog and takes the dog out with her when she leaves her unit.

The tenant testifies that she suffers from severe agoraphobia and the dog supports the tenant in her ability to leave her unit.

The tenant has provided documentation from the Adult Integrated Mental Health Services Society, from the Youth and Family Services, from her health clinic and from her Doctor. These letters indicate that the tenant is under the care of the different health and support teams and indicate that it would be detrimental for the tenant's health for her to move at this time. Some of the letters also indicate that the tenant's dog is an Emotional Therapy Animal that is a necessary and integral part of the tenant's life, helping the tenant manage the symptoms of her disability.

The landlord argues that the breach letter was very clear to the tenant and the tenant was informed that an eviction notice would be served if the tenant did not comply with section 22 of the tenancy agreement. The landlord argues that the tenant said she had complied but the landlord testifies that after September, 2011 it appears that the tenant had not complied and continued to have a dog in her unit.

The tenants advocate argues that within the Residential Tenancy Policy Guidelines if a landlord tolerates pets then a breach of this nature does not become a material term of a tenancy agreement. The tenant has not hidden the fact that the dog has stayed at her unit and the landlord has tolerated the dog since the breach letter was sent in June, 2011. The tenants advocate also argues that the high volume of other cats and dogs living in the complex also makes this term of the tenancy agreement unenforceable.

Analysis

I have carefully considered all the evidence before me, including the sworn testimony of both parties and witnesses. I refer the parties to the Residential Tenancy Policy Guidelines # 28 which provides guidance concerning pets and whether or not a pet clause in a tenancy agreement can be considered to be a material term. This Guideline states, in part, that 'in some cases a landlord may know of a pet being kept by a tenant in contravention of a pets clause and do nothing about it for a period of time. The landlord's mere failure to act is not enough to preclude him or her from later insisting on compliance with the pets' clause. However, a delay may indicate that the pets' clause is not considered by the landlord to be a material term of the tenancy agreement.

The landlord argues that after serving the tenant with a breach letter in June, 2011 concerning the tenants non compliance with the pets' clause, the landlord did not take any further action because the tenant informed the landlord that the pets were not living in her unit but were visiting the unit. The landlord further argues that it has recently been brought to their attention by other tenants that the tenant's dog is now living in the tenants unit

therefore the landlords have served the tenant with the Notice to End Tenancy for a breach of this material term of the tenancy agreement.

The tenant argues that because the landlord has been tolerating the tenant and other pet owners having pets in the complex this waives the landlord's right to terminate the tenancy for a breach of this nature.

I have considered both arguments put forth and find there is no evidence to show that the tenant's dog was living in the tenants unit at the time the breach letter was sent in June, 2011. However this breach letter clearly informs the tenant that the landlord considers the keeping of pets in the unit to be a breach of a material term of the tenancy agreement. The landlord has testified that they thought the tenant had complied with the breach letter and had no idea until 2012 that the tenant's dog was living in the tenants unit.

It is my decision that the tenant has not shown that the landlord has tolerated the tenants dog or other tenants pets as the landlord was not aware the tenants dog had returned to the unit and the landlord has testified that other tenants have been sent breach letters and Notices concerning pets. Consequently, I find the tenant was aware when she signed the tenancy agreement that no pets were allowed in the unit and again in June, 2011 that the landlord considered no pets to be a material term of the tenancy agreement. However, the tenant still went ahead and had her dog in her unit from September or December, 2011 in direct conflict with clause 22 of her tenancy agreement.

The tenant and the tenants support workers have all stated the tenant's dog is the tenants Emotional Therapy Dog however, there is no certification for the tenant's dog to support this and there is no provision under the *Act* for me to alter the terms of a tenancy agreement entered into freely by the parties under compassionate grounds. Therefore I find the reason given on the One Month Notice to End Tenancy is valid and the Notice is upheld. Consequently, the tenant's application to cancel the One Month Notice is denied.

The parties have agreed to extend the time given to vacate the rental unit to July 31, 2012 if the tenant is unsuccessful with her application.

Conclusion

The tenant's application is dismissed. The One Month Notice to End Tenancy for Cause will remain in force and effect.

I HEREBY ISSUE an Order of Possession pursuant to s. 55 of the *Act* in favour of the landlord effective on **July 31, 2012**. This order must be served on the tenant and may be filed in the Supreme Court and enforced as an order of that Court.

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: May 29, 2012.

Residential Tenancy Branch