



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding AQANTTANAM HOUSING SOCIETY
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes:

CNC

Introduction

This hearing was convened in response to the Tenant's Application for Dispute Resolution, in which the Tenant applied to cancel a One Month Notice to End Tenancy for Cause.

The Tenant stated that on August 31, 2022 the Dispute Resolution Package and evidence submitted to the Residential Tenancy Branch on August 31, 2022 was personally served to the Agent for the Landlord. The Agent for the Landlord acknowledged receipt of these documents and the evidence was accepted as evidence for these proceedings.

On December 08, 2022 the Landlord submitted evidence to the Residential Tenancy Branch. The Agent for the Landlord stated that this evidence was personally served to the Tenant, although she cannot recall the date of service. The Tenant acknowledged receiving this evidence and it was accepted as evidence for these proceedings.

On December 23, 2022 the Landlord submitted evidence to the Residential Tenancy Branch. The Agent for the Landlord stated that this evidence was personally served to the Tenant, although she cannot recall the date of service. The Tenant acknowledged receiving this evidence and it was accepted as evidence for these proceedings.

On December 29, 2022 the Tenant submitted evidence to the Residential Tenancy Branch. The Tenant stated that this evidence was personally served to an agent for the Landlord on December 22, 2022. The Agent for the Landlord acknowledged that this evidence was received and it was accepted as evidence for these proceedings.

On January 06, 2023 the Tenant submitted a one page document to the Residential Tenancy Branch. The Tenant stated that this evidence was personally served to an agent for the Landlord on January 06, 2023. The Agent for the Landlord acknowledged that this evidence was received in addition to a USB with video evidence. The document was accepted as evidence for these proceedings.

The participants were given the opportunity to present relevant oral evidence, to ask relevant questions, and to make relevant submissions. Each participant affirmed that they would speak the truth, the whole truth, and nothing but the truth during these proceedings.

The participants were advised that the Residential Tenancy Branch Rules of Procedure prohibit private recording of these proceedings. Each participant affirmed they would not record any portion of these proceedings.

While all documents submitted in evidence have been viewed, only those that are relevant to my decision are referenced in this decision.

Preliminary Matter

At the hearing the Tenant stated that she submitted an audio recording to the Residential Tenancy Branch on January 06, 2023, which was personally served to the Agent for the Landlord on January 06, 2023. The Agent for the Landlord acknowledged receipt of this evidence.

The parties were advised that I was unable to locate that evidence.

As the Agent for the Landlord acknowledges that this evidence was served to her, I accept the Tenant's testimony that it was submitted to the Residential Tenancy Branch and that it is not before me due to an administrative or human error. I therefore advised the parties that I would provide the Tenant with the opportunity to re-submit this evidence to the Residential Tenancy Branch.

The Tenant stated the audio recording was of a conversation between the Tenant and the Agent for the Landlord, in which the Agent for the Landlord acknowledged that she was aware the Tenant had been allowed to have a dog. The Agent for the Landlord stated that she does not recall telling the Tenant that the management had always been aware that the Tenant had permission to have the dog.

The parties agree that the Tenant did not inform the Agent for the Landlord that their conversation was being taped.

At the hearing the parties were advised that the Tenant had the right to resubmit that recording to the Residential Tenancy Branch, no later than January 25, 2023. The parties were advised that I would consider the audio recording if, after reflection, I considered it fair and reasonable to listen to an audio recording that was made without the consent of both parties.

After reviewing the evidence before me at the conclusion of the hearing, I was able to determine that the Tenant's application to cancel a One Month Notice to End Tenancy for Cause should be granted on the basis of the evidence before me. I therefore find it was unnecessary for me to consider the audio recording, as the Tenant's application was granted on the basis of the available evidence. As such, this decision was rendered prior to me receiving and/or considering the audio recording.

Issue(s) to be Decided

Should the One Month Notice to End Tenancy for Cause, served pursuant to section 47 of the *Residential Tenancy Act (Act)*, be set aside?

Background and Evidence

The Agent for the Landlord and the Tenant agree that:

- this tenancy began on October 01, 2020;
- the Tenant signed a tenancy agreement, which was submitted in evidence;
- the tenancy agreement declares that no dogs are allowed;
- the Tenant initialled a pet agreement, dated October 01, 2020, which was submitted in evidence;
- the pet agreement declares that no dogs are allowed;
- rent is due by the first day of each month;
- the Tenant is still living in the rental unit; and
- the Tenant has a dog.

The Agent for the Landlord stated that a One Month Notice to End Tenancy for Cause, dated August 30, 2022, was posted on the Tenant's door on August 30, 2022. The

Tenant stated that she located the One Month Notice to End Tenancy for Cause on her door on August 31, 2022.

The Agent for the Landlord and the Tenant agree that the One Month Notice to End Tenancy for Cause declares that the tenancy is ending because the tenant has breached a material term of the tenancy that was not corrected within a reasonable time and that the unit must be vacated by September 30, 2022.

The Tenant stated that when she applied to move into the rental unit, she informed the Landlord that she has a dog. The Tenant submitted a copy of page 8 of her application form, which indicates she has a dog. The Landlord does not dispute that this information was provided to the Landlord with her application for tenancy.

The Tenant stated that prior to signing the tenancy agreement an agent for the Landlord with the initials "JM" told her she could keep the dog in the rental unit whenever her kids were at the unit, and that her kids are at the unit most times.

The Tenant stated that when she signed the tenancy agreement and when she initialled the pet agreement, she thought she was agreeing to not having any dog, other than the one an agent for the Landlord agreed she could keep.

A document dated December 14, 2020 was submitted in evidence, in which the Landlord declared, in part, "be advised that we have allowed temporary placement of tenants with dogs"; we have decided to make "this allowance based on the re-development plans"; "these new allowances come with strict rules as well as a temporary, termed tenancy, not a month to month long term as many of you have in place"; and we cannot guarantee, nor do we "believe it will be likely that dogs will be allowed in the new development".

The parties agree that when this document was distributed, there were plans to demolish and rebuild the residential complex, which as not happened.

A document dated August 16, 2021 was submitted in evidence, in which the Landlord declared, in part, that allowing dogs at the complex was "temporary and expires August 31, 2021".

The Landlord submitted a document, dated October 01, 2020, in which an agent for the Landlord, with the initials "HB", declares that the Tenant met with two people who

presumably are employees of the Landlord. The document declares that these people told the Tenant that she could have a dog at the unit for “occasional short visits”; that longer visits would require approval; and as such, no pet deposit was collected.

The Tenant stated that she did not meet with “HB” and that the document of October 01, 2020 does not accurately reflect the information she was provided.

A document dated August 30, 2022 was submitted in evidence in which the Landlord declares, in part, “Although previous management allowed dogs on a temporary basis, Section F “No dogs allowed on premises came into effect on August 31, 2021”.

A document dated June 15, 2021 was submitted in evidence in which the Landlord refers to the agreement to allow dogs due to redevelopment plans. In this document the Landlord declares that the redevelopment has been declined and that dogs are not allowed on the property after August 31, 2021.

A document dated February 02, 2022 was submitted in evidence in which the Landlord informed the Tenant, in part, that the Landlord will end the tenancy if the Tenant does not re-house her dog. The Agent for the Landlord stated that this document was posted on the door of the rental unit on February 02, 2022. The Tenant stated that this document was not received.

A document dated January 19, 2022 was submitted in evidence in which the Landlord informs tenants, in part, that the Landlord will end their tenancy if they breach their tenancy agreement by having a dog.

A document dated April 29, 2022 was submitted in evidence in which the Landlord informs tenants, in part, that the Landlord will end the tenancy of anyone with a dog.

Analysis

On the basis of the undisputed evidence, I find that the Landlord and the Tenant have a tenancy agreement which requires rent to be paid by the first day of each month.

The tenancy agreement declares, on page 2, that this is a fixed term tenancy that ends on June 30, 2021. As the tenancy agreement does not clearly declare that the Tenant must vacate the unit at the end of the fixed term of the tenancy and the parties did not sign a second tenancy agreement, I find that this tenancy continued on a month-to-

month basis after June 30, 2021, pursuant to section 12(3) of the *Residential Tenancy Act Schedule*.

Section 47(1) of the *Residential Tenancy Act (Act)* permits a landlord to end a tenancy by giving notice to end the tenancy if:

- a) the tenant does not pay the security deposit or pet damage deposit within 30 days of the date it is required to be paid under the tenancy agreement;
- (b) the tenant is repeatedly late paying rent;
- (c) there are an unreasonable number of occupants in a rental unit;
- (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
 - (iii) put the landlord's property at significant risk;
- (e) the tenant or a person permitted on the residential property by the tenant has engaged in illegal activity that
 - (i) has caused or is likely to cause damage to the landlord's property,
 - (ii) has adversely affected or is likely to adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant of the residential property, or
 - (iii) has jeopardized or is likely to jeopardize a lawful right or interest of another occupant or the landlord;
- (f) the tenant or a person permitted on the residential property by the tenant has caused extraordinary damage to a rental unit or residential property;
- (g) the tenant does not repair damage to the rental unit or other residential property, as required under section 32 (3) [*obligations to repair and maintain*], within a reasonable time;
- (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;
- (i) the tenant purports to assign the tenancy agreement or sublet the rental unit without first obtaining the landlord's written consent as required by section 34 [*assignment and subletting*];
- (j) the tenant knowingly gives false information about the residential property to a prospective tenant or purchaser viewing the residential property;
- (k) the rental unit must be vacated to comply with an order of a federal, British

Columbia, regional or municipal government authority;

(l) the tenant has not complied with an order of the director within 30 days of the later of the following dates:

(i) the date the tenant receives the order;

(ii) the date specified in the order for the tenant to comply with the order.

On the basis of the testimony of the Tenant, I find that on August 31, 2022 she received the One Month Notice to End Tenancy for Cause dated August 30, 2022. I find that this was proper notice of the Landlord's intent to end the tenancy pursuant to section 47(1)(h) of the Act.

When a landlord wishes to end a tenancy pursuant to section 47(1)(h) of the Act, the landlord bears the burden of proving that the tenant breached a material term of the tenancy agreement.

Residential Tenancy Branch Policy Guideline 8, with which I concur, reads, in part:

A material term is a term that the parties both agree is so important that the most trivial breach of that term gives the other party the right to end the agreement.

To determine the materiality of a term during a dispute resolution hearing, the Residential Tenancy Branch will focus upon the importance of the term in the overall scheme of the tenancy agreement, as opposed to the consequences of the breach. It falls to the person relying on the term to present evidence and argument supporting the proposition that the term was a material term.

The question of whether or not a term is material is determined by the facts and circumstances surrounding the creation of the tenancy agreement in question. It is possible that the same term may be material in one agreement and not material in another. Simply because the parties have put in the agreement that one or more terms are material is not decisive. During a dispute resolution proceeding, the Residential Tenancy Branch will look at the true intention of the parties in determining whether or not the clause is material.

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.

On the basis of the undisputed evidence, I find that section F of the agreement and the pet agreement clearly declare that dogs are not permitted.

I find that there is sufficient evidence, however, to show that the Landlord did not clearly indicate their intent to enforce the term of the tenancy agreement that prohibits dogs. In reaching this conclusion I was influenced, in part, by the undisputed evidence that the Tenant informed the Landlord that she had a dog in her application for tenancy. The fact the Landlord entered into a tenancy agreement with the Tenant knowing that she had a dog, strongly suggests the Landlord did not intend to enforce the term that prohibited dogs.

In concluding that there is sufficient evidence to show that the Landlord did not clearly indicate their intent to enforce the term of the tenancy agreement that prohibits dogs, I was further influenced by the Tenant's testimony that prior to signing the tenancy agreement an agent for the Landlord with the initials "JM" told her she could keep the dog in the rental unit whenever her kids were at the unit, and that her kids are at the unit most times.

In concluding that there is sufficient evidence to show that the Landlord did not clearly indicate their intent to enforce the term of the tenancy agreement that prohibits dogs, I was further influenced by the document dated December 14, 2020. This document, which was created within 8 weeks of the start of this tenancy, clearly establishes that the Landlord was permitting tenants to have dogs, which corroborates the Tenant's testimony that she was permitted to have a dog.

Although the document dated December 14, 2020 cautions tenants that the right to have a dog will likely not continue after the residential complex is redeveloped, the complex was not redeveloped and therefore this provision is irrelevant.

In concluding that there is sufficient evidence to show that the Landlord did not clearly indicate their intent to enforce the term of the tenancy agreement that prohibits dogs, I was further influenced by the document dated August 16, 2021, in which the Landlord declared, in part, that allowing dogs at the complex was "temporary and expires August 31, 2021". I rely on this document to conclude that it corroborates the Tenant's

testimony that she was permitted to have a dog. I do not, however, conclude that it establishes that the Landlord had the right to withdraw consent for the Tenant to have a dog.

In considering this matter I have placed limited weight on the document, dated October 01, 2020, in which an agent for the Landlord, with the initials “HB”, declares that when the tenancy began the Tenant was told she could have a dog at the unit for “occasional short visits”. I have placed limited weight on this document, in part, because the Tenant does not agree that it correctly reflects the information provided. I have also placed limited weight on this document because it was written by “HB”, who apparently was not present during this meeting. I therefore find that the information recorded by “HB” was provided by other employees of the Landlord that were present at the meeting, and that “HB” may have misinterpreted the information provided by those employees or those employees may have misrepresented the information.

In considering this matter I have considered the document, dated August 30, 2022, in which the Landlord declares, in part, “Although previous management allowed dogs on a temporary basis, Section F “No dogs allowed on premises came into effect on August 31, 2021”. I rely on this document to conclude that it serves to corroborate the Tenant’s testimony that she was permitted to have a dog. I do not, however, conclude that it establishes that the Landlord had the right to withdraw consent for the Tenant to have a dog.

In considering this matter I have considered the document, dated June 15, 2021, in which the Landlord declares that the redevelopment has been declined and that dogs are not allowed on the property after August 31, 2021. I rely on this document to conclude that it serves to corroborate the Tenant’s testimony that she was permitted to have a dog. I do not, however, conclude that it establishes that the Landlord had the right to withdraw consent for the Tenant to have a dog.

As there is insufficient evidence to conclude that the Landlord clearly communicated, at the start of the tenancy, their intent to enforce the term of the tenancy agreement that prohibits dogs, I cannot conclude that the Landlord and the Tenant agreed that this term was a material term of the tenancy.

As there is insufficient evidence to conclude that the Landlord and the Tenant agreed that the term prohibiting dogs is a material term of the tenancy, I find that the Landlord has submitted insufficient evidence to establish that they have the right to end this

tenancy because the Tenant breached a material term of the tenancy, pursuant to section 47(h) of the *Act*.

As the Landlord has failed to establish that the Tenant breached a material term of the tenancy by having a dog, I find there is no need for me to determine if the Landlord gave the Tenant written notice to correct that alleged breach.

As the Landlord has failed to establish grounds to end the tenancy pursuant to section 47(h) of the *Act*, I grant the Tenant's application to cancel the One Month Notice to End Tenancy for Cause.

Conclusion

The Tenant's application to cancel a One Month Notice to End Tenancy for Cause, dated August 30, 2022 is granted and that Notice is set aside. This tenancy shall continue until it is ended in accordance with the *Act*.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Act*.

Dated: January 21, 2023

Residential Tenancy Branch