



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Ministry of Housing

A matter regarding Moberly Investments
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC, AAT, OLC

Introduction

The Tenant applied to the Residential Tenancy Branch, with amendments, starting on November 28, 2022 for a cancellation of the One Month Notice to End Tenancy for Cause (the “One-Month Notice”) by which the Landlord seeks to end the tenancy. The Tenant also applied for access to the rental unit for themselves and their guests, and the Landlord’s compliance with the legislation and/or the tenancy agreement.

The matter proceeded by way of a hearing pursuant to s. 74 of the *Residential Tenancy Act* (the “Act”) on April 6, 2023. In the conference call hearing I explained the process and offered each party the opportunity to ask questions.

Both the Tenant and the Landlord attended the hearing. Each party had a chance to present their submissions, refer to the evidence, and respond to the submissions of the other.

Preliminary Matters – Tenant’s Notice of Dispute Resolution Proceeding and evidence

The Tenant in the hearing stated they served the Notice of Dispute Resolution Proceeding to the Landlord by putting this form in the mailbox at the Landlord’s office on December 16, 2022. This was prior to the Tenant’s amendment to their Application on December 20, and the Tenant stated they also provided this update to the Landlord.

The Tenant stated they provided their evidence to the Landlord. They did not disclose their five pages of evidence dated March 24, 2023 to the Landlord; therefore, this material is excluded from my consideration.

In the hearing, the Landlord stated they received the Notice of Dispute Resolution Proceeding from the Residential Tenancy Branch, a courtesy copy, by email on December 20. They received two amendments to the Tenant's Application. They received no other documents as evidence provided by the Tenant; however, the copy of the Tenant's Notice of Dispute Resolution Proceeding contained a list of evidence provided on the third page, noted as "description of evidence". They clarified that the Residential Tenancy Branch did not provide the Tenant's evidence separately to them.

I am not satisfied the Tenant completed service of their evidence to the Landlord as required. The Tenant did not state definitively, with proof, that they provided all documents they want to use as evidence in this process to the Landlord. The Landlord was having to communicate to the Residential Tenancy Branch for details on the hearing, and the Landlord stated the only idea they had about the Tenant's evidence was what was listed on one of hearing information documents.

With no proof of service to the Landlord, and how the Landlord described this matter of evidence in the hearing, I am not considering the Tenant's evidence in this process, and instead rely on the Tenant's testimony in the hearing. Any consideration of documents separately from the Tenant (*i.e.*, not provided to the Landlord) would prejudice the Landlord in this matter. On this, I apply the *Residential Tenancy Branch Rules of Procedure* Rule 3.5 and Rule 3.1.

Preliminary Matter – Landlord's evidence and written response submission

The Landlord provided their evidence to the Tenant on March 24, 2023 via expresspost, delivered on March 28.

The Tenant confirmed they received the Landlord's evidence on March 24.

The Landlord completed service of their evidence to the Tenant as required by the *Residential Tenancy Branch Rules of Procedure*. This evidence from the Landlord receives my full consideration herein.

Issues to be Decided

Is the Tenant entitled to a cancellation of the One Month Notice?

If unsuccessful in this Application, is the landlord entitled to an Order of Possession of the rental unit?

Is the Landlord obligated to allow the Tenant and/or their guests access to the rental unit?

Is the Landlord obligated to comply with the *Act* and/or the tenancy agreement?

Background and Evidence

The parties signed the tenancy agreement on December 23, 2020 for the tenancy starting on February 1, 2021. The Tenant paid a security deposit of \$755, and no pet damage deposit. The relevant pages from the agreement appear in the Landlord's evidence package.

Paragraph 17 of the tenancy agreement sets out the following:

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 . . . If the tenant fails to correct violation of this clause, including permanently removing a pet from the residential property after receiving notice from the landlord to correct the violation, the landlord may end the tenancy.

The Landlord's copy in the evidence contains a red stamp over the parties signatures: "NO PETS." The Landlord in the hearing stated this was stamped on the agreement at the time the parties signed. This appears on the carbon copy retained by the Landlord; the Tenant stated their copy did not have this stamp.

in their written summary dated March 24, the Landlord stated that the Tenant has repeatedly confirmed there was an animal on the property. They provided images from security cameras showing this. The Tenant claimed the animal was a service animal, but they did not provide proof that the animal is a certified support animal as per the British Columbia *Guide Dog and Service Dog Act*.

The Landlord also pointed to paragraph 19 of the agreement that notes the requirement for written permission for additional occupants. The Landlord submits the Tenant did not request

written permission for their daughter to visit for five months; this extra occupant started staying in the rental unit in October 2022.

In their statement, the Landlord listed the following events:

- November 1, 2022: the building manager observed the Tenant with a small white dog, and advised that animals were not permitted on the property. To this, the Tenant advised the dog was that of a friend, and would be leaving soon. This was a verbal warning to the Tenant.
- November 8, 2022: the Landlord received an email from the Tenant informing them that the Tenant's daughter was visiting and will stay for 5 months, and also requesting the allowance of "a service/emotional dog" because the Tenant was aware of the building's policy on pets. The Tenant attached a psychiatric certificate in Spanish, untranslated, a "sanitary certificate" stamped by a foreign veterinarian, two pictures of a small white dog wearing a harness labelled "emotional support". The Tenant stated:

I am aware of our building policy, but I was hoping to get special permission from you in the meantime that she is visiting me; the dog does not bark and is trained to act calmly and be with people, and he is always in his service dog harness. I'm hoping you can help me with this one because I can't afford to put her in a hotel.

On investigation and consideration of the issue, the Landlord determined that the dog was not certified as per the requirements of the *Guide Dog and Service Dog Act*.

- November 22, 2022: The Landlord advised the Tenant that the tenancy agreement did not contain a provision for "emotional/service dog" and thus the Tenant was in breach of a material clause of the tenancy agreement. The Landlord at this time did not know that the dog had already arrived because the Tenant did not specify their daughter's and their dog's arrival date. (Note: the corresponding email in the Landlord's record is dated November 21, 2022)
- December 6, 2022: Another building resident reported the presence of the dog. The building manager confirmed the dog was with the Tenant, by reviewing the security camera footage.
- December 7, 2022: The building manager observed the dog with the Tenant, as recorded. The Landlord gave three breach notices to the Tenant on their rental unit door, for pets, occupants/guests, and their conduct when interacting with the building manager. These letters appear in the Landlord's evidence.

- December 9, 2022: The Tenant sent an email to the Landlord that confirmed the dog present in the rental unit. In this email the Tenant stated they had already “provided the necessary proof that it is [in] fact a service animal per the email sent on November 8th, 2022” The Tenant also stated: “I believe that the landlord cannot refuse my guest to have a service animal and I will continue to do so.” The Tenant attached an excerpt from Residential Tenancy Branch information webpage that sets out some points on “Guide and service dogs”.
- December 12, 2022: The Landlord clarified ‘service animal’ definition as per the *Guide Dog and Service Dog Act* in a letter to the Tenant, posted to the rental unit door. In this letter, the Landlord stated to the Tenant that they had “not provided any recognized certification under the British Columbia Guide Dog and Service Dog Act”.

The Landlord provided a response from the Tenant dated December 13, 2022. In this, the Tenant provided a linked webpage/image containing information on human rights and guide/service dogs. The page notes: “Therapy and emotional support animals, including dogs, are not eligible for certification.”

- December 16, 2022: the Landlord served a One-Month Notice to the Tenant.
- December 20, 2022: The Landlord received notice of the Tenant’s amendment to their Residential Tenancy Branch Application for Dispute Resolution (*i.e.*, the *amendment*, and not a copy of the original notice). By calling the Residential Tenancy Branch, the Landlord became aware of the Tenant’s Application, and this was their first notice of that.
- January 10, 2023: The Landlord withdrew the December 16 One-Month Notice because of an error. They issued a new One-Month Notice, for the same breach, with the move-out date of February 28, 2023.

The Landlord provided a copy of the One-Month Notice. The One-Month Notice bears the signature of the Landlord on January 10, 2023, serving the document by attaching it to the door on the rental unit on that date. The Proof of Service document provided by the Landlord shows this service on January 10, 2023 at 1:43pm, along with a separate witness statement.

On page 2 of the document, the Landlord provided the reasons for giving notice:

- Breach of a material term of the tenancy agreement that was not corrected within a reasonable amount of time after written notice to do so.

The details on page 2 are:

The tenant has breached a material clause of the Residential Tenancy Agreement, Section 17 PETS. . . The tenant has failed to permanently remove the animal from the residential property after written notice on December 7, 2022 to do so.

- January 12, 2023: the Landlord confirmed an additional occupant was staying with the Tenant because the Tenant named a second Tenant – their daughter – as a Tenant on their Application to the Residential Tenancy Branch. By letter to the Tenant, the Landlord advised the additional occupant must vacate by January 22, 2023.
- January 24, 2023: The Landlord received no confirmation that the additional occupant moved out, so they issued a separate One-Month Notice, with a move-out date of February 28, 2023.

The Landlord provided a copy of this One-Month Notice they issued on January 24, 2023, with documents attesting to service on that date. They provided the same indicated reason on page 2, and added:

The tenant has breached a material clause of the Residential Tenancy Agreement, Section 19 ADDITIONAL OCCUPANTS.

- March 21, 2023: The Landlord observed the Tenant with a dog on the property.

The Landlord provided 10 images captured by security cameras of either the Tenant with the dog, or the Tenant's daughter with the dog on the property.

The Landlord included a copy of the Tenant's November 8, 2022 letter wherein they requested the Landlord's approval for both the dog and their daughter's stay. The Landlord included a copy of the certificate in Spanish dated September 22, 2022. This document notes an October 15, 2022 travel date via Mexico to Vancouver. In the Landlord's own translation, the document states: "This Certificate is issued to be presented to Aero Mexico Airline."

In the hearing, the Tenant presented that they asked the Landlord for permission on November 8, 2022. In line with this they provided all documents they had to facilitate this, stemming from AirCanada's request for information relating to the dog's need to fly. The Landlord is being unreasonable in refusing this request, and they waited 14 days for the Landlord's response on

this issue. The consulted with the Residential Tenancy Branch, who told them “you can stay there”, and the dog is not a “pet”. In the Tenant’s home country, this dog is a “service dog”, the same as an “emotional support animal”.

Twice in the hearing, the Tenant also stated that this was a matter of human rights. The Tenant also raised the issue of the Landlord harassing them at the rental unit property on a regular basis.

In the hearing, the Landlord reiterated that they asked the Tenant for supporting documentation regarding the dog’s status as a service animal; however, they did not receive this, as required. They had no notice of a date of the Tenant’s daughter arriving, so a response from them was not a priority in November.

The Landlord’s position is that they received no proof of the dog’s status as a service animal. On their initial observation and mention of the issue to the Tenant, the Tenant’s response was that it was their friend’s dog and it would be out from the rental unit shortly.

Analysis

The *Act* s. 47 states, in part:

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

(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;

In this matter, the onus is on the Landlord to provide they have cause to end the tenancy.

The *Act* makes reference to specific terms in a tenancy agreement, those respecting pets, in s. 18:

(1) A tenancy agreement may include terms or conditions doing either or both of the following:

a) prohibiting pets, or restricting the size, kind or number of pets a tenant may keep on the residential property;

b) governing a tenant’s obligations in respect of keeping a pet on the residential property.

(3) This section is subject to the *Guide Dog and Service Dog Act*.

Definitions are set in s. 1 of the *Guide Dog and Service Dog Act*:

- “guide dog” means a dog that
 - (a) is trained as a guide for a blind person, and
 - (b) is certified as a guide dog;
- “service dog” means a dog that
 - (a) is trained to perform specific tasks to assist a person with a disability, and
 - (b) is certified as a service dog;

Further:

- “guide dog team” means a blind person and a guide dog that are certified as a guide dog team
- “service dog team” means a person with a disability and a service dog that are certified as a service dog team

The *Guide Dog and Service Dog Act* also specifies that a person (*i.e.*, a landlord) must not, as per s. 3(2):

impose, on an individual who is a member of any of those teams, a term or condition for the tenancy of a . . . rental unit if the term or condition discriminates on the basis that the individual who is a member of the team intends to keep the dog that is a member of the team in the . . . rental unit

This is basically saying that the *Guide Dog and Service Dog Act* prohibits a landlord from discriminating against a person with a disability who intends to keep a guide or service dog in the residential premises.

I find the Tenant’s dog, which their daughter (*i.e.*, the Tenant herself) brought into the unit under the pretext of it being a “service/guide dog” (as they stated in messages to the Landlord) is not, as per the *Guide Dog and Service Dog Act*, designated as such. The Tenant did not provide certification proof to the Landlord when requested, and there is no evidence, or statements from the Tenant in the hearing, that they undertook to start the certification process.

I find the Tenant requested permission for the dog to stay under the pretext of it being a service/guide dog to their Landlord only after the fact of the dog’s arrival and stay in the unit had commenced. This was after the initial sighting of the dog with the Tenant by the Landlord. In this respect, the Tenant violated a term of the tenancy agreement.

The term, as it appears in the tenancy agreement, is identified by the Landlord as being a material term, the violation of which results in an end to the tenancy. I find the term itself is an enforceable term of the tenancy agreement, being consistent with s. 18 of the *Act*. Further, I find the individual term is not unconscionable in that it was plain to the parties at the time of signing the agreement, with no evidence the Landlord took advantage of the Tenant in any way. Third, the term is fully explained in a manner that communicates the Tenant's obligation, along with the ramifications for a violation.

I find the Landlord afforded the Tenant the opportunity to rectify the situation, by removing the dog from the rental unit. The Tenant did not do so. The Tenant did not go one step further to ensure that the dog was certified as was required. The Tenant in the hearing relied on what was told to them by a representative from the Residential Tenancy Branch; however, this is second-hand information with that representative having no knowledge of the situation. That does not stand as authority in this matter.

In sum, I find that, definitively, the dog is not a "service dog" or a "guide dog" as defined in the *Guide Dog and Service Dog Act*. What the Tenant provided to the Landlord – in a document that sets out their daughter's need to have the dog with them for an international flight, a different threshold of proof than what is required in a living situation – does not set this straight. Travel policies are widely different from residential tenancy laws.

This leaves the matter open to interpretation of whether the dog is an "emotional support dog". In January 2022, the British Columbia Human Rights Tribunal examined this issue and explained what kind of medical information someone would need to provide when requesting permission to have an emotional support animal.¹ That is, specifically medical information that includes: the severity of their medical condition; how the condition affects their functioning; and how having the animal would actually beneficially impact their condition, with this being the most important part.

I note this Human Rights Tribunal case was an examination of a strata bylaw and its applicability to an owner. I find the case instructive in the principle involved with a body's consideration of a Tenant's request for an emotional support animal, and what threshold of proof is needed to show that the animal is distinguishable as an emotional support animal.

In this case, minus information from the Tenant showing otherwise, I find the Tenant's dog is a pet. That is distinct from a service dog or guide dog, and with no proof the Tenant applied for

¹ *Lylack v. The Owners, Strata Plan Number LMS1755 and others*, 2022 BCHRT 16

this designation separately, and no proof in the form of approval from a qualified mental health professional who practices in British Columbia. The Tenant abiding by an airline's policy in order to travel is not sufficient proof of the animal's support of the Tenant's daughter, required by the Landlord in this situation where a specific term in the tenancy agreement prohibits pets. I find the burden of proof was on the Tenant to show that the dog was unique in its purpose, with ill effects should the dog not be in place. The Tenant did not overcome this burden of proof.

With this conclusion, I find the Tenant breached the enforceable term of the tenancy agreement that specifically prohibits pets. I found above that the term is enforceable as such.

In conclusion, I find the Landlord has met the burden of proof to show they have cause to end the tenancy. They provided a thorough, day-by-day account of their knowledge and communication to the Tenant in this matter. This does not reveal any bias toward the Tenant and the Landlord afforded the Tenant the opportunity to rectify the situation, with attention to the specific term in the tenancy agreement.

In line with this, I dismiss the Tenant's Application for a cancellation of the One-Month Notice.

The *Act* s. 55(1) states that if a tenant applies to dispute a landlord's notice to end tenancy and their Application for Dispute Resolution is dismissed or the landlord's notice is upheld, the landlord must be granted an Order of Possession if the notice document complies with all the requirements of s. 52 of the *Act*. On my review, the One-Month Notice the Landlord issued on January 10, 2023 contains all the required elements set out in s. 52.

By this provision, I find the Landlord is entitled to an Order of Possession and the tenancy shall end. The Tenant's Application for cancellation of the One-Month Notice is dismissed without leave to reapply. Because of my conclusive findings on the issue concerning the Tenant's pet, I decline judgement on the other issues involving the unauthorized occupant in the rental unit, as well as the Tenant's conduct as being reasons cited by the Landlord for ending the tenancy.

Given that the tenancy is ending, I make no analysis or decision on the Tenant's Application concerning the Landlord's compliance with the *Act*/tenancy agreement, or allowing access for the Tenant or their guests into the rental unit. Those issues would concern an active ongoing tenancy; however, this tenancy is ending.

Conclusion

For the reasons outlined above, I grant an Order of Possession to the Landlord, **effective TWO DAYS** after they serve it to the Tenant. Should the Tenant fail to comply, the Landlord may file this Order of Possession with the Supreme Court of British Columbia, where it may be 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 s. 9.1(1) of the *Act*.

Dated: April 16, 2023

Residential Tenancy Branch