

Residential Tenancies Tribunal

[REDACTED] Decision 19-0938-05

John R. Cook
Adjudicator

Introduction

1. The hearing was called at 9:25 am on 11 February 2019 at the Government Service Centre, Motor Registration Building, 149 Smallwood Drive, Mount Pearl, NL.
2. The applicant, [REDACTED], was represented at the hearing by [REDACTED] and [REDACTED], hereinafter referred to as "landlord1" and "landlord2", respectively.
3. The respondent, [REDACTED], hereinafter referred to as "the tenant", also participated in the hearing. She was represented by [REDACTED] ("[REDACTED]").

Issues before the Tribunal

4. The landlord is seeking an order for vacant possession of the rented premises,

Legislation and Policy

5. The jurisdiction of the Director of Residential Tenancies is outlined in sections 46 and 47 of the *Residential Tenancies Act, 2018*.
6. Also relevant and considered in this case is section 20 of the *Residential Tenancies Act, 2018* and the *Service Animal Act*.

Issue 1: Vacant Possession of Rented Premises

Relevant Submissions

7. Landlord1 stated that [REDACTED] had entered into a rental agreement with [REDACTED], the tenant's father, in 1998 and landlord2 submitted a

copy of that rental agreement at the hearing ([REDACTED] #1). [REDACTED] purchased the building from [REDACTED] in 2004 and has been the landlord since that date.

8. The tenant lived at the unit with her father as a caregiver since 1998 until he passed away in February 2017. After [REDACTED] passed away, the tenant remained at the rental unit and became the sole leaseholder. Copies of the lease renewals for 2017, 2018 and 2019 ([REDACTED] ##2-4) were submitted by landlord2 showing that they were addressed to and signed by the tenant.
9. Landlord1 pointed to section 12 of the 1998 rental agreement which states that "No pets are to be kept in the rented premises." She did acknowledge that that clause had been relaxed somewhat and the complex is now cat-friendly, but she claimed that since [REDACTED] had purchased the building, they have enforced the no-pets policy for residents wishing to keep dogs.
10. Landlord1 stated that there were some residents at the complex who did have dogs in 2004 and they were allowed to keep those dogs until they passed away. But she stated that no new dogs have been allowed in the complex since 2004 and there are currently no residents, except for the tenant, keepings dogs as pets at the complex.
11. Landlord1 stated that the tenant claims that her dog is a service animal, but she contested that claim. Landlord1 stated that she was informed that the tenant's dog was given to her by a relative when that relative's dog had puppies. She stated that the tenant's dog has not received any training and is not certified as required by the regulations. In support of that contention, landlord2 submitted into evidence a copy of the Newfoundland and Labrador Human Rights Commission's Guidelines Regarding the Use of Service Animals ([REDACTED] #7).
12. Landlord1 acknowledged that the tenant's dog probably does provide her with emotional support, but she argued that all pets provide some sort of support or comfort to their owners—they wouldn't keep them otherwise. She argued that just because the tenant's dog provides her with emotional support, that does not mean it is a service dog.
13. Landlord1 stated that some other residents in the complex have been complaining to her that it is not fair that the tenant is able to keep a pet dog when they have had to find new homes for their dogs when they first looked to move into the complex. She also stated that there are residents who reside in the complex precisely because there is a no-dog policy in place.
14. Accordingly, on 17 September 2019 landlord2 issued the tenant a notice ([REDACTED] #5) stating that she was in breach of her rental agreement insofar as she had recently acquired a pet dog and she instructed her to have the dog removed from the unit by 30 September 2019.

15. The tenant did not comply with that notice and as such, on 04 October 2019, landlord2 issued the tenant a termination notice. A copy of that notice was submitted with the landlord's application ([REDACTED] #6). That notice was issued under section 20 of the *Residential Tenancies Act, 2018* (notice where material term of agreement contravened) and it had an effective termination date of 30 November 2019.
16. The tenant has not vacated the rental unit as required and the landlord is seeking an order for vacant possession of the rented premises.

The Tenant's Position

17. The tenant stated that she was not aware that there was a no-dog policy in place at the complex and she identified 2 other residents at the complex who also have pet dogs.
18. With respect to her dog, which she stated is a pug terrier, she claimed that it is fully grown now and is no bigger than a cat. She stated that it is only 10 lbs in weight and that it "has all of its needles". She also claimed that it is well-behaved and that it never barks.
19. The tenant stated that she suffers from anxiety, depression and Post-Traumatic Stress Disorder (PTSD) and she claimed that her dog helps her cope with those conditions. She testified that her dog accompanies her everywhere and has enabled her to attend her appointments.
20. In support of her claim that her pug terrier is a support dog, the tenant submitted 2 letters at the hearing ([REDACTED] #1, #2), one from her doctor, [REDACTED] (" [REDACTED] "), and one from her case manager, [REDACTED].
21. [REDACTED] writes:

I believe it is advantageous for [REDACTED] to have a dog, [REDACTED], at this time as it motivates her to walk more and to engage with her neighbours in the building. This is expanding her circle of support and encourages her to feel better about herself.

22. [REDACTED] writes:

[REDACTED] has given [REDACTED] meaning, she eases her loneliness, ultimately increasing her quality of life. In my professional opinion, [REDACTED] is propelling [REDACTED] further in her recovery journey.

[REDACTED] reiterated that statement at the hearing and testified that her dog is beneficial and "helping her in her recovery journey".

23. The tenant also stated that her dog is “registered online” and she also “has her papers done up” to determine if her dog qualifies as a therapy dog through St. John Ambulance. That assessment will be made in November 2020.
24. The tenant also submitted a copy of a petition at the hearing (█ #3), signed by 43 residents at the complex, indicating that they “appeal” the decision of the landlord to remove the tenant’s “Emotional Support dog” and in which they express the belief that “all tenants should be allowed a companion pet.”
25. The tenant also testified that after she received the notice from the landlord (█ #5) to remove the dog from her apartment, she has made arrangements with her brother-in-law to collect the dog when he gets off work in the evenings. He then takes the dog home with him for the night and it is returned to the tenant in the morning. The tenant testified that this arrangement, to allow the dog at the unit only during the day, was deemed to be an acceptable solution by one of the landlord’s employees.

Analysis

26. The lease submitted by the landlord clearly states that no pets are to be kept in the rented premises. I find, therefore, that having a pet dog in her unit would be a material breach of that lease.
27. Where a tenant commits a material breach of their rental agreement, the *Residential Tenancies Act, 2018* states that a landlord may terminate that agreement, on 1-month’s notice, if the tenant does not comply with a notice to remedy the breach.
28. Although the tenant claims that the dog is only at the unit during the daytime, I agree with the landlords that this does not mean that the tenant has come into compliance with the no-pet policy.
29. However, according to section 5 of the *Service Animal Act*, a no-pet policy in a lease does not apply when the animal in question is a service animal. I quote:

Right to housing

- 5. (1) A person shall not**
 - (a) deny to a person occupancy of a commercial unit or a self-contained dwelling unit; or**
 - (b) discriminate against a person with respect to a term or condition of occupancy of a commercial unit or a self-contained dwelling unit,**

by reason only that the person is a person with a disability and keeps or is customarily accompanied by a service animal.

(2) A prohibition in a lease against the keeping of dogs or animals does not apply to a service animal owned or used by a person with a disability.

30. The question, then, is whether the tenant's dog is a service animal. "Service animal" is defined in this Act as follows:

Definitions

2. In this Act

...

(c) "service animal" means an animal trained to provide assistance to a person with a disability and having the qualifications prescribed by the regulations and used by a person with a disability

(i) where it is readily apparent that the service animal is used by the person for reasons relating to his or her disability, or

(ii) where the person provides a letter from a physician, a nurse or those persons or categories of persons prescribed in the regulations confirming that the person requires the service animal for reasons relating to the disability

31. Landlord1 pointed out that the tenant's dog has not received the training prescribed by the regulations. But the problem with that claim is that no regulations have yet been prescribed, even though the *Service Animal Act* came into force 8 years ago.

32. In the absence of any regulations, the Human Rights Commission, according to the Guidelines submitted by the landlord, advises the following:

What proof is required for service animal training?

At present there are no training and qualifications prescribed by law for service animals in this province. In the absence of such regulations, there is no obligation to ensure that the animal has any specific qualifications. If the animal is described by its owner as trained as a service animal and it behaves like a service animal, this is sufficient proof at present or until such time as specific qualifications is prescribed in the regulations.

Typical behaviours of trained service animals are that they are under control of their handler at all times. The animal is harnessed, leashed, or tethered, unless these devices interfere with the work or task that they perform, or the individual's disability prevents using these devices. In

those instances, the individual relying on the animal must maintain control of the animal through voice, signal or other means.

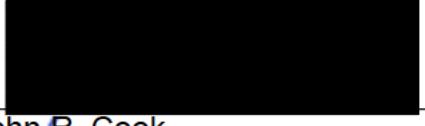
33. Based on these guidelines, and in the absence of any regulations, I am of the view that the tenant's dog can be considered to fall under the definition of a "service animal". The tenant testified that she has several mental disabilities (anxiety, depression and PTSD) and she describes her dog as a support animal. She provided letters from a doctor and a nurse in which they both state that her dog is helping her in her recovery process and in which they request that she be granted permission to keep the dog in her unit.
34. Until such time as some regulations are prescribed which make clear what training or certification is required for an animal to be deemed a "service animal", I find that the tenant's dog meets the remaining criteria set out in the *Service Animal Act*.
35. In that case, the no-pet policy listed in the tenant's lease does not apply to her dog and therefore she is not in breach of that agreement.
36. As the tenant has not committed a breach of her rental agreement, the termination notice issued to her on 04 October 2019 is not valid.

Decision

37. The termination notice issued to the tenant on 04 October 2019 is not a valid notice.
38. The landlord's claim for an order for vacant possession of the rented premises does not succeed.

21 February 2020

Date


John R. Cook
Residential Tenancies Tribunal