

Residential Tenancies Tribunal

[REDACTED] Decision 20-0222-05

Michael Greene
Adjudicator

Introduction

1. The hearing was called at **11:30 am on 08 June 2020** at Residential Tenancies Hearing Room, 84 Mt. Bernard Avenue, Lower Level, The Sir Richard Squires Building, Corner Brook, Newfoundland via Bell Teleconferencing System.
2. The applicant, [REDACTED], hereafter referred to as the landlord, participated in the hearing. The applicant was represented by [REDACTED] (**Affirmed**).
3. The respondent, [REDACTED], hereafter referred to as the tenant, participated in the hearing. (**Affirmed**).
4. The details of the claim were presented as a written monthly rental agreement. Rent was set at \$860.00 per month and due on the 1st of each month. There was a security deposit in the amount of \$645.00 collected on the tenancy on or about 24 June 2019. The landlord issued a termination notice:
 - a. Dated 27 January 2020 for the intended termination date of 29 February 2020 under Section 20 of the *Residential Tenancies Act, 2018*.
5. In a proceeding under the *Residential Tenancies Act, 2018*, the applicant has the burden of proof. This means the applicant has the responsibility to prove that the outcome they are requesting should be granted. In these proceedings the standard of proof is referred to as the balance of probabilities which means the applicant has to establish that his/her account of events are more likely than not to have happened.

Preliminary Matters

6. The affidavit submitted by the landlord shows that the tenant was served with the notice of this hearing on the **20 May 2020** by serving the Application for Dispute Resolution documents to the tenant personally at the rental address.

Issues before the Tribunal

7. The **Landlord** is seeking the following:
 - a) Vacant possession of the rented premises
 - b) Hearing expenses

Legislation and Policy

8. The jurisdiction of the Director of Residential Tenancies is outlined in the *Residential Tenancies Act, 2018 (the Act)*, Section 47.
9. Also relevant and considered in this case are:
 - a. Sections 20, 34 and 35 of *the Residential Tenancies Act* and;
 - b. Sections 9, 10, 11 and 12 of the *Human Rights Act, 2010*;
 - c. Section 2 and 5 of the *Service Animal Act*;
 - d. Human Rights Commission: *Guidelines Regarding the Use of service Animals*
 - e. Policy 12-1: *Recovery of Fees: Filing, Costs, Hearing Expense, Interest, Late Payment and NSF*.

Issue 1: Vacant Possession of the Rented Premises

Landlord Position

10. The landlord is seeking to recover possession of the rented premises located at [REDACTED].
11. The landlord testified that she is looking to have their property returned as per section 20 the *Residential Tenancies Act, 2018*.

12. The landlord testified that the rental agreement is a written monthly tenancy (**Exhibit L # 3**). The landlord further testified that a notice to terminate was issued on 27 January 2020 under Section 20 of *the Act* (**Exhibit L # 1**) to terminate the tenancy on 29 Feb 2020. The landlord testified that the notice to terminate was served personally by the landlord to the tenant on or about 27 January 2020.
13. The landlord testified that on or about December 2019, the tenant approached the landlord and advised that he may be vacating the property in January 2020. The landlord advised that the tenant had requested to have a dog in the property so he could travel with it. She further advised that this request was denied and explained that there is a no pet policy as per the rental agreement (**Exhibit L # 3**).
14. The landlord additionally testified that the tenant had notified them that he had a dog in the building and provided a copy of the Service Dog Registration (**Exhibit T # 1**) along with a letter from his Psychologist (**Exhibit T # 2 & 3**).
15. The landlord testified that it is their opinion that the dog is not a service dog and is a pet. The landlord testified that they issued a notice to remove the dog from the building (**Exhibit L # 2**). The landlord testified that this request was not adhered to and a termination notice (**Exhibit L # 1**) was issued on 27 January 2020 terminating the tenancy on 29 February 2020 under section 20 of the *Residential Tenancies Act, 2018*.
16. The landlord indicated that as of the hearing date (08 June 2020), the tenant remained in the unit. There is 1 adult living in the unit. The landlord is seeking vacant possession of the property.

Tenant Position

17. The tenant testified that he received the notice to terminate the tenancy (**Exhibit L # 1**).
18. The tenant testified that he does not deny having a dog in the building, but indicates she is not a pet, but is an emotional support/service animal. The tenant advises that he has been suggested by his Psychologist and family physician to get an emotional support animal as a treatment for his disability of PTSD and Anxiety. The tenant referred to a letter provided by his psychologist (**Exhibit T # 2**) along with the registration of his dog as a service animal (**Exhibit T # 1**).

Analysis

19. The validity of the termination notice is determined by its compliance with the notice requirements identified in sections 20, and 34 as well as the service requirements identified in section 35.

20. The issue on the technical aspects of the notice in this matter on examination of the notice supplied and the testimony of both parties have been met.
21. The lease submitted by the landlord clearly states that no pets are permitted in the rented premises without prior written permission. I find, therefore, that having a pet dog in the unit would be a material breach of that lease.
22. 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-months' notice, if the tenant does not comply with a notice to remedy the breach.
23. As part of the analysis of this decision, a review of the Provincial Human Rights Legislation was conducted. I reference here the Prohibitive section of the *Human Rights Act, 2010* which reads:

Prohibitive Grounds

9. (1) For the purpose of this Act, the prohibited grounds of discrimination are race, colour, nationality, ethnic origin, social origin, religious creed, religion, age, **disability**, disfigurement, sex, sexual orientation, gender identity, gender expression, marital status, family status, source of income and political opinion.

10. Discrimination in contravention of this Act does not require an intention to discriminate.

11. (1) A person shall not, on the basis of a prohibited ground of discrimination,

(a) deny to a person or class of persons goods, services, accommodation or facilities that are customarily offered to the public; or

(b) discriminate against a person or class of persons with respect to goods, services, accommodation or facilities that are customarily offered to the public.

24. Further, in accordance with 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 and reads:

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.

25. Similar language can be found in Section 12 of the *Human Rights Act, 2010* and reads:

12. (1) A person, directly or indirectly, alone or with another, by himself or herself, or by the interposition of another, shall not, on the basis of a prohibited ground of discrimination,

(a) deny to a person or class of persons occupancy of a commercial unit or a self-contained dwelling unit; or

(b) discriminate against a person or class of persons with respect to a term or condition of occupancy of a commercial unit or a self-contained dwelling unit.

(2) Notwithstanding subsection (1), a limitation, specification, exclusion, denial or preference because of a disability shall be permitted where that limitation, specification, exclusion, denial or preference is based upon a good faith qualification as determined by the commission.

26. The two questions then are (1) does the tenant have a demonstrated disability and (2) is the tenant's dog a service animal? "Service animal" is defined in the *Service Animal 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

27. The tenant has provided a registry document for his animal, however there is no national registry as it relates to service animal within Canada. Similarly, the *Service Animal Act* refers to training requirements within the regulations and no regulations have yet to be prescribed, even though the *Service Animal Act* came into force 8 years ago.

28. The landlord has not shown that the animal has acted outside any norm that could be considered against any duty to accommodate of the landlord (ie: excessive barking, failure of the tenant to clean and maintain and clean after the dog etc), to name just a few examples.

29. In the absence of any regulations, the Human Rights Commission, has developed guidelines to assist the public and reads:

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.

30. Based on the evidence presented regarding the registration of the animal, the guidelines provided by the Human Rights Commission, the Human Rights Legislation, and in the absence of any regulations regarding Service Animals, 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 he is suffering from and being followed by a medical professional for a mental and physical disabilities (anxiety, PTSD and physical impairments). Further, the tenant describes his dog as a support animal and has in at least some forum, registered the animal as such. The tenant has provided a letter from a registered psychologist who is following and treating the patient and has recommended the use of an emotional service animal for the patient's recovery.

31. 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 current criteria set out in the *Service Animal Act*.

32. In that case, the no-pet policy listed in the tenant's lease does not apply to his dog and therefore the tenant is not in breach of the rental agreement.

33. As the tenant has not committed a breach of the rental agreement, the termination notice issued to him on 27 January 2020 is not valid.

Decision

34. The termination notice issued to the tenant on 27 January 2020 is not a valid notice.
35. The landlord's claim for an order for vacant possession of the rented premises does not succeed.

Issue 3: Hearing Expenses

Landlord Position

36. The landlord paid a fee in the amount of \$20.00 as an application filing fee and presented a receipt from Service NL ([REDACTED]) (**Exhibit L # 4**). The landlord is seeking this cost.

Analysis

37. I have reviewed the testimony and evidence of the landlord in this matter. The expenses incurred by the landlord is considered a reasonable expense and are provided for with in Policy 12-1 *Recovery of Fees: Filing, Costs, Hearing Expense, Interest, Late Payment and NSF* in the event the claim has been successful. As the landlord's claim has failed, I find the landlord is responsible to cover these reasonable expenses.

Decision

38. The landlord shall cover their own hearing expenses.

Summary of Decision

39. The landlord's claim for vacant possession and hearing expenses fails.

16 June 2020

Date


Michael Greene
Residential Tenancies Tribunal