

28. Pet Clauses

Jan-04

This Policy Guideline is intended to provide a statement of the policy intent of legislation, and has been developed in the context of the common law and the rules of statutory interpretation, where appropriate. This Guideline is also intended to help the parties to an application understand issues that are likely to be relevant. It may also help parties know what information or evidence is likely to assist them in supporting their position. This Guideline may be revised and new Guidelines issued from time to time.

Sometimes a tenancy agreement will contain what is commonly referred to as a "pets clause" prohibiting the tenant from keeping pets or animals generally or from keeping pets of a certain size, kind or number or setting out the tenant's obligations regarding the keeping of the pet.

When a landlord feels that a tenant is breaching a pets clause by having an animal on the premises, it is not uncommon for the landlord to give the tenant a written notice to get rid of the pet. If the tenant fails to do so within a reasonable time, the landlord might give the tenant a notice to end the tenancy claiming that the tenant has breached a material term of the tenancy agreement and failed to rectify the breach within a reasonable time after being given written notice to do so¹. Alternatively, the landlord might apply for an order that the tenant comply with the tenancy agreement².

If a tenant chooses to dispute the landlord's notice to end the tenancy or opposes the landlord's application to comply, the matter will come before an arbitrator who will determine, in the case of a notice to end the tenancy, whether the pets clause in the tenancy agreement is a "material term" of the tenancy agreement. In the case of an application for an order that the tenant comply with the tenancy agreement, the arbitrator will determine whether the pets clause is an enforceable term of the tenancy agreement. In making that determination, an arbitrator will be governed by three factors: that the term is not inconsistent with the *Residential Tenancy Act*, the *Manufactured Home Park Tenancy Act*, or their respective Regulations, that the term is not unconscionable, and that the term is expressed in a manner that clearly communicates the rights and obligations under it.³

The question of whether or not a pets clause is a material term of the tenancy agreement will depend upon what the parties intended to be the consequence of a breach of the clause. The tenancy agreement itself may designate the pets clause to be a "material term". While that is an important indication, it is not always conclusive.

Generally speaking, if the wording of a pets clause captures even trivial breaches which a reasonable person wouldn't expect would justify ending a tenancy, the pets clause may be found not to be a material term by an arbitrator. The question of whether or not a pets clause is "unconscionable" involves a number of factors too detailed to outline here.

For a better understanding of these two subjects see Guideline 8 - "Unconscionable and Material Terms".

1 *Residential Tenancy Act*, s. 47(1)(h); *Manufactured Home Park Tenancy Act*, s. 40(1)(g)

2 RTA, s. 62(3); MHPTA, s. 55(3)

3 RTA, s. 6(3); MHPTA, s. 6(3)

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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.

As well, if a landlord is aware of the breach of a pets clause and does not insist on compliance and does something which clearly indicates that the pet is acceptable, the landlord may be prohibited from ending the tenancy for that breach. This is called "waiver". It is important to note that it is not a waiver of the pets clause itself, but only a waiver of the landlord's right to terminate the lease for that particular breach.

Where a landlord makes a clear representation to the tenant that the pet is acceptable, the landlord may later be prevented from claiming the pets clause has been breached.

It is always acceptable and advisable for the parties to write down and sign an agreement that pets or a certain pet is acceptable despite a pets clause in the tenancy agreement.

It is important to note that whether or not there is a pets clause in a tenancy agreement, if a pet causes extraordinary damage, unreasonably disturbs the enjoyment of other occupants of the property or threatens the safety or other lawful rights or interests of the landlord or other occupants, the tenant might be given a notice to end the tenancy.⁴ Similarly, if a pet causes damage that might be less than "extraordinary damage", the tenant might be given a notice to end the tenancy if the damage is not repaired within a reasonable time after the tenant has been given written notice to do so by the landlord.⁵

The *Guide Animal Act* of B.C. prohibits a landlord from discriminating against a person with a disability who intends to keep a guide animal in the residential premises.

⁴ RTA, ss. 47(1)(d), (e) and (f); MHPTA, ss. 40(1)©, (d) and (e)

⁵ RTA, s. 47(1)(g); MHPTA, S. 40(1)(f)