

IN THE MATTER between **MPM**, Applicant, and **HO**, Respondent;

AND IN THE MATTER of the **Residential Tenancies Act** R.S.N.W.T. 1988, Chapter R-5 (the "Act");

AND IN THE MATTER of a hearing before, **Janice Laycock**, Rental Officer, regarding a rental premises located within the **city of Yellowknife in the Northwest Territories**.

BETWEEN:

MPM

Applicant/Landlord

- and -

HO

Respondents/Tenants

ORDER

IT IS HEREBY ORDERED:

1. Under paragraph 14.2(2)(b) of the *Residential Tenancies Act*, the Applicant must return to the Respondent the pet security deposit paid totalling \$750 (seven hundred and fifty dollars).

DATED at the city of Yellowknife in the Northwest Territories this 26th day of November 2020.

Janice Laycock
Rental Officer

IN THE MATTER between **MPM**, Applicant, and **HO**, Respondent.

AND IN THE MATTER of the **Residential Tenancies Act** R.S.N.W.T. 1988, Chapter R-5 (the "Act");

AND IN THE MATTER of a hearing before **Janice Laycock**, Rental Officer,

BETWEEN:

MPM

Applicant/Landlord

-and-

HO

Respondent/Tenant

REASONS FOR DECISION

<u>Date of the Hearing:</u>	October 28, 2020
<u>Place of the Hearing:</u>	Yellowknife, Northwest Territories
<u>Appearances at Hearing:</u>	JB, representing the Applicant HO, the Respondent WO, witness for the Respondent
<u>Date of Decision:</u>	November 23, 2020

REASONS FOR DECISION

1. Background

An application to a rental officer made by Midwest Property as the Applicant/Landlord against HO as the Respondent/Tenant was filed by the Rental Office September 23, 2020. The application was made regarding a residential tenancy agreement for a rental premises located in Yellowknife, Northwest Territories. The filed application was served on the Respondent by email deemed received on October 2, 2020, pursuant to subsection 4(4) of the *Residential Tenancies Regulations* (the Regulations).

The Applicant claimed that the Respondent had acquired a dog and a lizard in breach of their tenancy agreement and sought an order for termination and eviction.

A hearing was held October 28, 2020, by three-way teleconference. On the call was JB representing the Applicant, HO as the Respondent, and WO as a witness for the Respondent. I adjourned the hearing without reaching a decision in order to further consider the evidence and testimony and to do some further research into the use of service animals in Canada.

With the consent of the parties, the style of cause of this matter has been amended to reflect the full name of the Landlord, "MPM".

2. Tenancy Agreement

Evidence was presented establishing a tenancy agreement between the parties for the period April 1, 2020 to March 31, 2021. I am satisfied that a valid tenancy agreement is in place in accordance with the *Residential Tenancies Act* (the Act).

3. Testimony - Breach of the Tenancy Agreement - no pets policy

In their application the Applicant claimed that the Respondent has attempted to get a dog on numerous occasions. The Applicant denied the Respondent permission unless they could show certification that it was a service dog. Despite numerous requests, at the time the application was filed the Respondent had still not provided certification. The Applicant also believed that in addition to a dog the Respondent had also brought a lizard to live in the rental premises. The Applicant alleged the Respondent was in breach of their tenancy agreement and sought termination of the tenancy and eviction.

Section 3.1 of the written tenancy agreement signed by the parties, makes it clear that "pets are not permitted to occupy, live in or visit the Premises". Section 3.4 makes an exception to that obligation in the case of service animals kept by a person with a disability:

“Any term in the Agreement or the Pet Policy that prohibits or restricts the size of a pet or that governs the tenant’s obligations regarding the keeping of a pet on the Premises, or that requires the Tenant to pay a pet security deposit shall not be effective where the pet is a service animal used by a Tenant with a disability to avoid hazard or to otherwise compensate for the disability.”

At the hearing the Respondent testified that they were not keeping a lizard in their unit, the lizard was their brother’s and was at the family home with him. They also testified and provided evidence that they have a disability and require a service animal (a dog) to assist them with their disability. Prior to the hearing they provided the Applicant with letters from medical professionals, including a Psychiatrist, attesting to their physical and mental health status and supporting their need for a service dog. On September 29, 2020, the Respondent provided a copy of a certificate from Service Dogs Canada recognizing their dog Forest as a service dog. At the hearing the Respondent also testified that they had paid a pet deposit of \$750 (although the landlord had not insisted on this) and requested that the pet deposit be returned to them as provided under subsection 14.1(3) of the Act.

4. Relevant NWT Legislation - service animals/disability

In the Northwest Territories there are three pieces of legislation that are relevant to the issues raised in this application: the *Residential Tenancies Act*, the *Food Establishment Safety Regulations*, and the *Human Rights Act*.

Residential Tenancies Act

The purpose of the *Residential Tenancies Act* is to set out the rights and obligations of both landlords and tenants in residential tenancies and to provide procedures for the enforcement of those rights and obligations. Subsection 7(2) of the Act makes it clear that the *Human Rights Act* applies to agreements between landlord and tenants.

Subsection 14.1(3) of the *Residential Tenancies Act* provides direction to landlords about pet security deposits in the case of a service animal:

- 14.1 (3) A landlord shall not require or receive a pet security deposit from a tenant
- (a) unless the tenant keeps or intends to keep a pet on the rental premises; or
 - (b) in respect of a service animal used by a person with a disability to avoid hazards or to otherwise compensate for the disability.

Food Establishment Safety Regulations

The *Food Establishment Safety Regulations* established under the *Public Health Act* sets out standards for the handling of food sold in the Northwest Territories so it is safe and suitable for human consumption.

41. (1) In this section, “service animal” means an animal that is being trained or used for the purpose of providing assistance to persons with a disability.

...

- (3) An operator may permit the following in a food establishment:

- (a) a service animal, except in an area where food is manufactured, processed, prepared, packaged or stored;

Human Rights Act

According to the Northwest Territories Human Rights Commission, the NWT *Human Rights Act* “protects the equality human rights of people in the NWT”¹. As previously established, the *Human Rights Act* applies to tenancy agreements between landlord and tenants and establishes protected grounds including “disability”.

1. (1) “disability” means any of the following conditions:

- (a) any degree of physical disability, infirmity, malformation or disfigurement that is caused by bodily injury, birth defect or illness,
- (b) a condition of mental impairment or a developmental disability,
- (c) a learning disability, or a dysfunction in one or more of the processes involved in understanding or using symbols or language,
- (d) a mental disorder;

Subsection 1(1.1) elaborates on this and includes a reference to “guide dog” but not to “service animal”:

1. (1.1) Examples of diseases or conditions that fall within paragraph (a) of the definition “disability” include, but are not limited to, diabetes mellitus, epilepsy, a brain injury, any degree of paralysis, amputation, lack of physical coordination, blindness or visual impairment, deafness or hearing impediment, muteness or speech impediment, or physical reliance on a guide dog or on a wheelchair or other remedial appliance or device.

.../5

¹<https://nwthumanrights.ca/your-rights/>

Section 12 addresses discrimination respecting tenancy, as well as the duty to accommodate.

12. (1) No person shall, on the basis of a prohibited ground of discrimination and without a *bona fide* and reasonable justification,
 - (a) deny to any individual or class of individuals the right to occupy as a tenant any commercial unit or self-contained dwelling unit that is advertised or otherwise in any way represented as being available for occupancy by a tenant; or
 - (b) discriminate against any individual or class of individuals with respect to any term or condition of occupancy of any commercial unit or self-contained dwelling unit.
- (2) In order for the justification referred to in subsection (1) to be considered *bona fide* and reasonable, it must be established that accommodation of the needs of an individual or class of individuals affected would impose undue hardship on a person who would have to accommodate those needs.

5. Other jurisdictions - Service Animals

In examining the issues raised in this application I reviewed how other jurisdictions have approached the use of service animals by persons with disabilities. I looked at the legislation in those jurisdictions that certify service animals (usually dogs) to better understand how certification works. I also looked at jurisdictions who haven't established such laws, to see how through legislation, policy, or guidelines they have provided direction on service animals.

This research was to inform my decisions on this application and to provide a resource to the Applicant and Respondent in this case, as well as others with an interest in this issue. It was in no way a comprehensive review. If the Northwest Territories was to consider revising or establishing new legislation on this issue, further research would be required.

As previously discussed, the Northwest Territories does not reference training or set out standards for the certification of service animals in our legislation. However, five other jurisdictions in Canada have created legislation that requires service dogs to be trained and certified, and their trainers to be certified to provide training. This includes Alberta (*Service Dogs Act*)², British Columbia (*Guide Dog and Service Dog Act*)³, Nova Scotia (*Service Dog Act*)⁴ and Newfoundland and Labrador⁵ (*Service Animal Act*)⁶.

.../6

² <https://www.qp.alberta.ca/documents/Acts/S07P5.pdf>

³ <https://www.bclaws.ca/civix/document/id/complete/statreg/15017>

⁴ <https://www.nslegislature.ca/sites/default/files/legc/statutes/service%20dog.pdf>

⁵ Note: regulations are not yet in force setting out standards.

⁶ <https://www.assembly.nl.ca/legislation/sr/statutes/s13-02.htm>

In these provinces their legislation requires that service animal teams are certified, sets out standards, and identifies trainers who are approved to deliver training. In British Columbia, according to the government's website⁷, service dogs can be certified if their dog is trained at an accredited school or if the animal passes a public safety test. The guide and service dog test "assesses whether a dog is calm, stable and reliable in situations commonly encountered by dogs and handler teams. It also evaluates if:

- the handler has control over the dog
- the dog is safe to be in public
- the dog demonstrates the high standard or training required of guide and service dogs."

In Alberta, the assessment also includes the service dog's ability to assist the person with a disability.⁸

In Newfoundland and Labrador, although the government has legislation, they have not yet brought into force regulations setting out standards. In the absence of regulations the Newfoundland and Labrador Human Rights Commission has established "Guidelines Regarding the Use of Service Animals"⁹ to provide "further information to persons with disabilities who are accompanied by service animals about their rights and responsibilities as well as to outline the rights and responsibilities of providers of service and facilities to the public". Although this document is not legal advice, I think that their guidance in "What proof is required for service animal training" is very helpful:

"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."

In other provinces or territories where, similar to the NWT, there is no specific legislation setting out standards and certification, there may be definitions or other references in their legislation which provide some direction.

For instance, in Ontario, under the *Accessibility for Ontarians with Disabilities Act (AODA) Customer Service Standards*¹⁰ one of two conditions must apply for an animal to be considered a service animal:

.../7

⁷<https://www2.gov.bc.ca/gov/content/justice/human-rights/guide-and-service-dog/certification-testing>

⁸<https://www.alberta.ca/get-service-dog-assessed.aspx>

⁹<https://thinkhumanrights.ca/education-and-resources/guidelines/guidelines-regarding-the-use-of-service-animals/>

¹⁰<https://www.aoda.ca/customer-care-standard/#animals>

1. the animal is easily identifiable as relating to the disability;
2. the person with the disability can provide documentation from a regulated health professional confirming the animal is required due to a disability.

In Manitoba, the *Service Animal Protection Act*¹¹, makes it an offence to interfere with service animals. Under this legislation a service animal “*means an animal (a) trained to be used by a person with a disability for reasons relating to his or her disability*”. However, there is no standard established in the legislation for that training. The Manitoba Human Rights Commission has established a policy on service animals¹² that provides general guidance on service animals and sets out two factors that the Commission will consider to determine if a particular animal meets the definition of service animal:

- “1. Does the animal provide assistance to a person with a disability, which relates to the persons disability?
2. Has the animal been individually trained to provide assistance to a person with a disability that relates to the person’s disability?”

In Saskatchewan, there is no specific legislation on service animals, however the Saskatchewan Human Rights Commission has also created a “Policy on Service Animals”¹³ and a “Policy on Support Animals”¹⁴. These policies help provide guidance on accommodating persons with disabilities who require animals to assist them. The distinction between the two categories seems to be that service animals have specialized training to provide services for a disabled person, however the policy does not provide any advice on who provides that training or what, if any, standard they must attain. The “Policy on Support Animals” includes the following advice that I think is helpful for either service animals or support animals:

“Once the disability and requirement for a support animal is established, the tenant’s request should be considered using a “reasonableness test”. It is rare that a request for accommodation to allow support animals in rental accommodation will constitute an undue hardship. Accommodation may not be possible if there is another tenant with a medically substantiated allergy who would be affected or if the tenant fails to properly control the animal. Each request for accommodation must be assessed individually.

Conflicting requests for accommodation should be carefully examined to determine if it is possible to reconcile the requests.”

.../8

¹¹ <https://web2.gov.mb.ca/bills/39-3/b238e.php>

¹² <http://www.manitobahumanrights.ca/v1/education-resources/resources/policies-pages/policies-i-9.html>

¹³ <https://saskatchewanhumanrights.ca/wp-content/uploads/2020/03/PolicyOnServiceAnimals.pdf>

¹⁴ <https://saskatchewanhumanrights.ca/education-resources/policies-guidelines/policy-on-support-animals/>

In the Northwest Territories the Human Rights Commission has not established a policy on service animals, but their guide called “Human Rights and Tenancy”¹⁵ includes helpful information on landlord’s or tenant’s responsibility when it comes to “duty to accommodate”.

Under the Q and A section of that guide there is a question on an “assistance dog” that provides some guidance for landlords:

- “Q. I have a no-pets rule in most of my buildings. Recently a tenant with a disability asked permission to get an assistance dog. I told him he can get the dog if he moves to one of my buildings that allows pets. He refuses to move. I am worried if he stays in the building and gets a pet, everyone else will ask for one. What are my rights?
- A. Landlords are allowed to have no-pets rules. At the same time, human rights law require landlords to make exceptions to these rules to accommodate tenants who require assistance animals. An assistance animal is not a pet. It is a working animal trained to assist persons with particular disabilities. Even though the tenant lives in a no-pets building, it is your duty to reasonably accommodate the tenant to the point of undue hardship. You can allow him to have an assistance animal and still maintain your no-pets rule for other tenants.”

So, what does this all mean? I came to a few conclusions that I think are helpful in the consideration of the application in front of me:

- owners can train their service animals, and if certain basic standards related to safe and appropriate behaviour are met they can be certified in some jurisdictions;
- service animals do a range of things to provide assistance to a person with a disability, as a result their training can be quite varied;
- without standards set in law, there is no obligation to ensure that the service animal has any specific qualifications;
- it is reasonable for a landlord to ask a tenant to verify that they have a disability (although they don’t need to provide specific details of their diagnosis), and that they require a service animal to assist them with their disability;
- landlords need this information so that they can make reasonable decisions about accommodating the tenant and determining if the request for the accommodation creates an undue hardship.

In determining if an animal is a service animal, the lack of specific legislation in provinces and territories in Canada has created uncertainty for those who use service animals, as well as the businesses and services who have a duty to accommodate persons with disabilities. This uncertainty is discussed in “Unnecessarily Uncertain: Roberts Properties and the Case for an Official Service Animal Registry”¹⁶, by

.../9

¹⁵<https://nwthumanrights.ca/resources/tenancy/>

¹⁶ Owen Pennock, Unnecessarily Uncertain: Roberts Properties and the Case for an Official Service Animal Registry, Board of Editors of the Saskatchewan Law Review, 2020 CanLII Docs 572, <<http://www.canlii.org/t/srjq>>.

Owen Pennock. In his piece for the Saskatchewan Law Review, Pennock makes a case for an official registration scheme for service animals in Saskatchewan. He points out that the increase in the use of service animals by people with “invisible disabilities” has meant that they may rely on administrative tribunals rather than legislation to protect their rights.

Although I think Pennock makes a good case for standards, not all jurisdictions will have the infrastructure to support assessment and training of service animals. It is important to make sure that standards support people with disabilities and do not create barriers. If the NWT was interested in creating legislation, further work would need to be done to determine if training and assessment services could be created that are accessible to all, even small and remote communities.

6. Case Law

I reviewed a number of cases heard by the Northwest Territories Rental Office, but could not find a decision that directly relates to the issue of service animals. I also reviewed decisions in other jurisdictions that, like ourselves, do not have legislation establishing standards for training and certification of service animals. I found that the case-specific details and the legislative and policy framework in the jurisdiction made it difficult to apply their findings to the application in front of me. Furthermore, I believe that we do not need to go outside the Northwest Territories for direction, as the case of *Lawson v 994486 N.W.T. Ltd.* heard by the Northwest Territories Human Rights Adjudication Panel¹⁷ establishes precedence in the Northwest Territories.

The *Lawson* case deals with whether an individual was discriminated against on the basis of disability when she was advised that she had to leave a restaurant unless she removed her service dog from the premises. As the *Human Rights Act* applies to the *Residential Tenancies Act*, decisions of the Adjudication Panel take precedence, and I believe that the decisions in this case provide guidance on a number of issues in this application including definition of disability, need to show certification of dog, and safety:

Definition of disability

In the *Lawson* case it was found that the complainant’s back injury fell within the definition of “disability” under the *Human Rights Act*. In this decision, the Panel commented that the “definition of “disability” is broad and quite encompassing of a variety of diseases and conditions and is not dependent on the severity of the disease or condition.”

.../10

¹⁷ *Lawson v. 994486 N.W.T. Ltd.*, 2008 NWTHRAP 8 (CanLII), <<http://canlii.ca/t/fqd34>>.

Duty to accommodate

The counsel for the restaurant raised a number of excuses that might result in a reasonable justification for the failure to accommodate Lawson:

- Need to Show Certification of Dog - It was argued that nothing identified the dog as a service dog and if Lawson did not have any certification papers or other documents showing that it was a service dog then Lawson could be asked to either remove the dog or leave the restaurant. Although the dog did not have a service dog harness or coat or papers, the Adjudicator found that *"Despite this, I do not find that Lawson needed to show certification of Megamo."* Counsel cited the case of *Feldman v. Westfair Foods Lts (c.o.b. Real Canadian Superstore) (1998), 34 C.H.R.R. D/394*, in which the British Columbia Supreme Court upheld the decision of the British Columbia Human Rights Tribunal that a blind person did not need to prove that her dog was a guide dog.

The Adjudicator also commented that *"Lawson's disability may be less obvious that she needed the assistance of a service dog. Nonetheless, Loeppky testified that Lawson told her that Megamo was a service dog. Upon Lawson stating this, LePage and Loeppky were not entitled to ask for further information with respect to the dog. To do so is as discriminatory as asking Lawson to prove her disability."*

- Safety - The restaurant owner argued that the restaurant was noisy and crowded, and that the dog's body was sticking out from under the table. The Adjudicator commented that there was no indication that the dog was bothered by the noise in the restaurant, that he was moving around, that he was barking, or that he was causing a disturbance, and referred to the case of *Thiffault v Quebec-Air Quebec*¹⁸ where the Canadian Human Rights Tribunal stated: *"...Despite the fact that such safety measures are essential and necessary, they should not be used as a pretext, excuse or bona fide justification for engaging in discriminatory practice."* The NWT Adjudicator concluded, *"I am of the view that there were no serious safety considerations that existed that could constitute reasonable justification for disallowing Lawson in the restaurant with her dog."*

7. Issues Raised by the Application

At the hearing, after receiving testimony from both parties, I suggested that there were three main questions related to the issues raised in the application:

- A. Is the Respondent a person with a disability?

.../11

¹⁸ <http://canlii.ca/t/1g8qj>

- B. If so, do they require a service animal to avoid hazards or to otherwise compensate for their disability?
- C. Is the dog, Forest, that service animal?

Although the answer to the first two questions was not disputed by the Applicant, I felt that it was important to review the evidence and confirm our understanding. Both parties agreed that this might be a helpful approach and we proceeded based on this framework.

A. Is the Respondent a person with a disability?

Included in the evidence are five letters from health professionals supporting the Respondent's need for a service dog and describing her physical and mental health issues, including:

- ▶ "chronic medical conditions" (letter from Dr. Brian Hannon, June 20, 2019),
- ▶ "chronic pain and mental health concerns" (letter from Nicole Mensik, Resident October 2, 2019),
- ▶ "medical conditions" (letter from Marlies Houwing, MD, August 27, 2020), and
- ▶ "long-term mental health diagnosis" (letter from Thomas Ripley, MD (Psychiatrist) August 27, 2020).

At the hearing the Respondent testified that she had broken her back and was receiving regular treatment for that.

Conclusion

Considering the evidence provided, the broad definition of "disability" in the Northwest Territories *Human Rights Act*, and the interpretation of disability in *Lawson v 994486 N.W.T. Ltd.*, I confirm that the Respondent has physical injuries and mental health issues that would fall within the definition of "disability". At the hearing there was no disagreement by the parties with this finding.

B. Does the person with a disability require a service animal?

Having confirmed that the Respondent is a person with a disability, I believe that the next issue to consider is do they need a service animal.

Under the *Residential Tenancies Act* it is anticipated that a person with a disability might need a service animal "to avoid hazards or to otherwise compensate for the disability", and under the *Food Establishment Safety Regulations* that they might need a service animal to provide assistance with their disability. Although the reference to "avoid hazards" may be interpreted to reference a specific service animal, such as a guide dog for the blind, I believe that "otherwise compensate" read in combination with "providing assistance" should be interpreted broadly, especially considering the breadth of the definition of "disability" and the protections provided in section 12 of in the *Human Rights Act*.

Considering the broad definition of “disability” in the *Human Rights Act*, it follows that there may be many ways that service animals are of assistance to disabled persons other than avoiding physical hazards. In this case there is overwhelming support from the Respondent’s health professionals for a service animal to assist with her disability, and at the hearing the Respondent also testified that the service dog, Forest, assisted her with her disability.

In the letters from the health professionals, provided as evidence, there are a variety of observations about the need for a service animal (dog) to assist the Respondent:

- Dr. Brian Hannon in a letter dated June 20, 2019, said: “It is my professional opinion that her ongoing and chronic medical conditions require the presence of a dog which will be with her at all times.”
- Nicole Mensik, Resident, in a letter dated October 2, 2019, said: “we [physicians at Frame Lake Clinic] support her need for a service dog to help manage her chronic pain and mental health concerns.”
- Marlies Houwing, MD, in a letter dated August 27, 2020, said: “patient has been diagnosed with medical conditions that would likely benefit from the presence of a service dog.”
- Thomas Ripley, MD (Psychiatrist), in a letter dated August 27, 2020, said: “In my opinion, it would be most beneficial for her [Respondent] to have the assistance of a Service Dog. Studies have shown that this can be extremely helpful for individuals with her condition. I have no doubt that she will provide excellent care for her service dog, and that it will be able to assist her with the difficulties arising from her condition.”
- Jeanna C. Creaser, MD, in a letter dated September 18, 2020, said: “This patient requires this service dog (Forest) to be with her at all times for medical reasons.”

At the hearing the Respondent testified that her service dog, Forest, accompanied her everywhere, including to medical appointments, sitting beside her when she received treatment.

After the hearing, in keeping with section 82 of the *Residential Tenancies Act* which allows a rental officer to “consider any relevant information obtained by the rental officer in addition to the evidence given at the hearing provided that the rental officer first informs the parties of the additional information and gives them an opportunity to explain or refute it”, I asked the Respondent to provide “further information on the assistance that Forest provides to you with your disability.” The Applicant was copied on this request.

In her reply the Respondent reported that Forest provides her with assistance related to her back injury, including (but not limited to) holding items, carrying mail or other items, picking up and giving items, assisting with balance and on stairs, assisting to and from appointments, and provides support during injection and physio therapy. Forest also provides assistance with psychiatric issues, including prompting regular exercise, waking her up, keeping her on a regular schedule, alerting her to anxiety and panic attacks, and comforting her.

Conclusion

Based on the evidence and testimony I think it is clear that the Respondent is in need of a service animal to assist her or otherwise compensate for the disability. At the hearing this finding was discussed and was not disputed by the parties.

3. Is the Respondent's dog, Forest, a service animal? (Does a tenant need to provide their landlord with proof - training and certification - that their dog is a service animal?)

This is the main issue raised by the Applicant and their purpose for making the application. In their application the Applicant said: "We cannot honor the rights under the classification of a service dog without proof that it is in fact a certified service dog." This was again communicated to the Respondent by email on September 11, 2020, where the Applicant stated: "As per the lease that you signed in March of 2020. Pets are not permitted unless you have received written permission from the landlord. You did not receive this permission prior to bringing the dog into your home so are in breach of lease. As per the lease, we will make an exception for a service dog but I do require certification to verify that it is in fact a service dog. You have yet to receive written permission from me. I am willing to wave the deposit and give you this permission but all I need is the certification. If I have not received this by Wednesday, September 16th at 5 pm, I will have to file with the Rental Office as you are in breach of your lease."

And in response to the Respondent's submission after the hearing, the Applicant raised issues about the age of the dog and the breed, asked that the tasks Forest can perform be demonstrated, and concluded with the following: "I would like to clarify that we are not questioning the ability or right for the Respondent to get a service dog but we are questioning if this is in fact a service dog."

At the hearing I stated that without legislation setting out standards for training and certification I did not see how certification could be provided or required. I also agreed with the Applicant that the certification from Service Dogs Canada, was not very helpful, aside from providing the Respondent with a way to identify her dog as a service dog and to assess some basic skills. However, I said I needed more time to consider this question.

As previously mentioned, the Northwest Territories does not have legislation that establishes training and certification requirements for service animals. In territorial legislation a service animal is defined in relationship to their use by persons with a disability, not by their training or certification.

Under subsection 12(1) of the *Human Rights Act* the Applicant has to accommodate the Respondent unless the Applicant can provide a reasonable excuse why they can't. Under subsection 12(2) it must be established that accommodation of the needs of an individual or class of individuals affected would impose undue hardship on a person who would have to accommodate those needs.

In *Lawson v 994486 N.W.T. Ltd.*, counsel for the restaurant, in trying to justify why Lawson was not accommodated, argued that she needed certification papers or other documents showing that her dog was a service dog. The NWT Human Rights Adjudicator deciding that case disagreed, saying that after being told by the person with a disability that their dog was a service dog the restaurant staff "were not entitled to ask for further information with respect to the dog. To do so is as discriminatory as asking Lawson to prove her disability."

I believe that this finding in the Lawson case is relevant to the application before me. The Respondent is a person with a disability, they have established that they require a service animal, and have given concrete examples of how the dog assists them with their disability.

Conclusion

It is my finding that the Respondent does not need to provide certification, which is not available or required in the NWT, nor do they need to demonstrate or prove that Forest has sufficient training by them or others to provide assistance. It is enough that their service animal does assist them.

At the hearing the Applicant also testified that the Respondent's dog was very young and large, and they were concerned that without proper training and certification the dog could be a hazard to others in the building. In addition, they argued that the building does not allow pets and some tenants had moved to that building because of that policy. As well, some tenants, and a person who works in the building cleaning, have a fear of dogs, especially big dogs. They felt that they had a responsibility to protect other tenants and their staff, although no complaints had been received about the dog and the Respondent has testified that the dog was well behaved in public .

Issues around the safety of restaurant patrons was also raised in the *Lawson* case where the Human Rights Adjudicator relied on comments from the Canadian Human Rights Tribunal: "*Despite the fact that such safety measures are essential and necessary, they should not be used as a pretext, excuse or bona fide justification for engaging in discriminatory practice.*" The NWT Adjudicator concluded: "*I am of the view that there were no serious safety considerations that existed that could constitute reasonable justification for disallowing Lawson in the restaurant with her dog.*"

I agree with the Applicant that the safety of other tenants and the Landlord's staff is very important and the Respondent is responsible for the behaviour of their service animal at all times. Currently there have been no complaints and the Respondent has testified to Forest's good behaviour. After the hearing the Respondent also provided information on the training that is being done to make sure that the dog acts appropriately and provides assistance with their disability.

Tenants and staff may benefit from a reminder from the Applicant about the provisions in the Act and tenancy agreement respecting service animals, and for the Respondent to clearly identify Forest as a service animal so other tenants recognize that Forest is a working dog and not a pet.

I would also add that although the Respondent is exempt from the pet security deposit under subsection 14.1(3), this does not mean that they are exempt from other obligations under the *Residential Tenancies Act*. For instance subsection 43(1) deals with "Quite Enjoyment" and states that "A tenant shall not disturb the landlord's or other tenants' possession or enjoyment of the rental premises or residential complex." Subsection 45(3) states that "A tenant shall maintain the rental premises and all services and facilities provided by the landlord of which the tenant has exclusive use in a state of ordinary cleanliness". If Forest causes disturbances that are not related to their assistance to the Respondent, or is making a mess in the building, the Respondent could face complaints and be found in breach of the Act.

One last observation is that it was clear in this application that the relationship between the parties had broken down. Prior to the hearing the Respondent was not communicating at all with the Applicant. At the end of the hearing the Applicant expressed their willingness to work with the Respondent. I encourage the Respondent to take them up on this offer and for both parties to focus on finding reasonable solutions if issues arise.

8. Findings

I find that the Respondent's dog is a service animal and as such the Respondent is not in breach of their obligations under the Act or their tenancy agreement. I deny the Applicant's request for termination and eviction. Also, under paragraph 14.1(3)(b) of the Act the pet deposit of \$750 paid by the Respondent should be returned to them by the Applicant.

Janice Laycock
Rental Officer