

**IN THE SMALL CLAIMS COURT OF NOVA SCOTIA**

**Citation: *Downey v. Metro Regional Housing Authority, 2018 NSSM 63***

Claim No: SCCH 472360

**BETWEEN:**

THOMAS DOWNEY

**Appellant/  
Landlord**

-and –

METRO REGIONAL HOUSING AUTHORITY

**Respondent/  
Tenant**

Date of Hearing: May 3 and 14, 2018;

Date of Order: May 28, 2018;

Reasons Filed: June 12, 2018

Appearances:

Catherine Davison appeared on behalf of the Tenant, Thomas Downey.  
Sheldon Choo appeared on behalf of the Landlord, Metro Regional Housing Authority.

**DECISION**

(1) This is an appeal of a Decision and Order of the Director of Residential Tenancies rendered by Residential Tenancies Officer, Roberta Wilson, dated January 12, 2018, ordering the tenant, Thomas Downey, to give vacant possession of the premises, [address removed] Halifax, on or before April 30, 2018. The grounds given were that Mr. Downey's dog, "Cleo", who has lived with Mr. Downey since she was six weeks old, was not a service dog according to the *Service Dog Act* and therefore, the tenant was in violation of the landlord's rules relating to dogs in that building.

(2) The tenant appeals alleging that Cleo is, in fact, a service dog and Ms. Wilson based her decision on legislation that is not yet in effect.

(3) I filed the Order for this matter and indicated to the parties that I would follow up with written reasons. These are those reasons.

### **Appeal Allowed**

(4) In the final paragraph of her decision, Ms. Wilson stated:

“From the evidence presented, I find that Mr. Downey has not provided sufficient evidence to verify that his dog meets the standards of the Service Dog Act of Nova Scotia.”

(5) In her submissions, Ms. Davison, for the Tenant, correctly described the status of the *Service Dog Act*, S.N.S. 2016, c.4 (or Bill 161). That legislation received Royal Assent on May 20, 2016. However, the statute has yet to be proclaimed in force by the Governor in Council as provided in s. 23 of that legislation.

(6) Pursuant to s.17D(a) of the *Residential Tenancies Act*, the Small Claims Court may vary or rescind the order or make any order the Director may have made.

(7) Respectfully, I find the Tenancies Officer erred in applying the standards of a provincial act which is not yet in force. Indeed, it would be impossible to meet the standards of the legislation as it prescribes procedures for licensing and registration of service dogs which legally cannot exist until proclamation. The appeal is allowed and the Director’s Order is rescinded.

(8) An appeal from the decision of a Residential Tenancies Officer is a new hearing based on the evidence presented before the Small Claims Court Adjudicator. The evidence presented usually consists of that presented to the Residential Tenancies Officer (in whole or in part) and any additional evidence the parties seek to adduce.

(9) While the Director’s Order has been set aside, the Court may still find that Cleo is (or is not) a service animal. Before reviewing whether the tenant’s dog is a service animal, it is appropriate to review the background and evidence.

### **Background**

(10) Thomas Downey has been a tenant of [address removed], also known as [address removed], since November 2013. The apartment (referred to as “the premises”) is managed by the Metro Regional Housing Authority (MRHA). The lease is dated October 31, 2013.

(11) Mr. Downey was rendered a paraplegic as a result of a spinal cord injury thirteen years ago. Since moving into the premises, he has been an advocate for several tenants having formed and headed up a tenants’ association. In court, he impressed me as an intelligent and articulate person clearly gaining friendship of some of the tenants. His relationship with the Landlord is another matter.

(12) The relationship between the Landlord and Tenant in this case can be charitably described as strained. Mr. Downey calls it thorny. The evidence is clear neither side likes the other. From MRHA's perspective, Mr. Downey undertook a number of matters, such as acquiring a dog and making changes to the premises without notice to the Landlord. When confronted about it, he was uncooperative, hostile and belligerent. The evidence shows the Landlord did not treat Mr. Downey unfairly or show a lack of perspective. My only significant criticism is that I found they put too much stock in the reports of other tenants about Mr. Downey. Otherwise, I find their actions reasonable.

(13) In late 2015 or early 2016, Mr. Downey acquired a six week old puppy named Cleo. Her exact breed is not clear as the evidence is conflicting. The dog has been variously described as a pit bull or a mastiff cross. Both breeds are specifically addressed in the Pets Policy. The lease allows service dogs. Mr. Downey brought the dog to court at the commencement of each night of the hearing. She was well behaved for the short time she was in Court and was removed by a handler when she became fidgety.

(14) There is also evidence that Mr. Downey arranged for modifications to his apartment without the landlord's consent. Further, he did not seek approval to have a front loading washer in addition to the washer and dryer found in the unit when the lease was signed.

(15) Mr. Downey claims he had verbal permission from a previous manager at the MRHA to make the modifications and use the front loading washer. Further, he submits that Cleo is a service animal required by him to address his physical disability and any depression arising from that disability.

### **Issues**

- Is Cleo a service dog? Alternatively, did the tenant breach the lease by owning a dog in the premises?
- Did the tenant breach the lease by owning a different washer without permission of the landlord?
- Did the tenant breach the lease by making alterations to the premises to accommodate his disability without the landlord's permission?
- If a breach of the lease is found for any or all of these issues, what is the proper remedy?

### **The Evidence**

(16) Both parties tendered evidence. It is unnecessary to review in detail the evidence of each. Rather, I have summarized the relevant portions of their respective testimony

and the documentation below.

### **Evidence of the Landlord**

(17) The evidence presented by the landlord consists of the oral evidence of three employees of the housing authority as well as one of the tenants. I have summarized the evidence of the tenants separately.

#### Angela MacDonald

(18) Angela MacDonald is a property manager with the Metro Regional Housing Authority, having been employed in that role for 20 months. Prior to that, she worked for 22 years working for landlords in the private sector. It is her responsibility to deal with client services, resolve tenant issues and ensure the rules of the buildings are followed. She is responsible for 724 units located in the west and north ends of Halifax.

(19) Ms. MacDonald testified that Mr. Downey has been a tenant since 2013. She tendered into evidence the lease agreement. Despite that the lease is signed only by the tenant, its authenticity is not in dispute by either party. The provisions of the lease are addressed further in these reasons.

(20) Ms. MacDonald testified to the three primary issues in this case.

(21) With respect to the washer, Ms. MacDonald indicated that Mr. Downey has a front loading washer in addition to the top loading provided for the premises. She became aware of the washer when a complaint was raised by a tenant who felt it unfair that Mr. Downey could have his own washer and other tenants could not. Mr. Downey lied about having a washer and denied Ms. MacDonald entry beyond the front door. She could also tell the unit had been painted. Mr. Downey advised her the painting was done with the Landlord's permission. Ms. MacDonald testified there was no record of any permission in their files.

(22) A complaint was lodged regarding Mr. Downey having a dog in October 2016. As is their practice, Ms. MacDonald spoke to Robert Lundrigan, her supervisor. She concluded there was no permission sought or obtained from the landlord to have a dog. She tendered into evidence a letter signed directing there were to be no dogs in the building.

(23) On November 15, 2016, Tom Downey replied to a direction given to him by a director at the Metro Regional Housing Authority. He identified Cleo as a service dog and told Ms. MacDonald, "keep your mouth shut". Her response to Mr. Downey was for him to show that his dog is indeed a service dog.

(24) Mr. Downey provided a card showing Cleo was registered as an "Official Service Dog". Mr. Choo provided a hard copy of the background information from the website, [www.officialservicedogregistry.com](http://www.officialservicedogregistry.com). Despite the site name, it is clear from the myriad

disclaimers it carries no legal authority or verification process. Its purpose solely is to provide identification cards for the life of the animal. I reject this as evidence of any authenticity of Cleo's status as a service dog. I shall provide no further comment on this documentation.

(25) Based on the interactions and the lack of documentation, Ms. MacDonald concluded that Cleo is not registered as a service animal. Therefore, she does not fit within the exception of dogs permitted in the building. She left a voice message for Mr. Downey indicating that he should provide the proper documentation, otherwise the matter would proceed to Residential Tenancies. On May 30, 2017, Ms. MacDonald advised Mr. Downey they were still waiting on confirmation from him to show the dog was a service dog.

(26) Mr. MacDonald and Mr. Lundrigan referred the matter to the landlord's internal committee, apparently including three tenants, which recommended Mr. Downey's eviction. According to the MRHA, the tenant has the option to reapply for residency in the premises, presumably as long as the issues triggering the previous eviction are properly addressed.

(27) In addition to having the dog in the premises, Ms. MacDonald indicated to Mr. Downey that he violated the rules as tenants have complained of being bullied and harassed.

(28) Under cross-examination, she testified that her predecessor was Catherine Shanks whose file notes show no such permission. She testified that there was permission given by Janet Burt for Mr. Downey to paint his unit on the condition that it be returned to its original color on his vacating the premises. There were no other changes permitted such as railings or the electrical and plumbing work necessary for installation of the front loading washer.

(29) Ms. MacDonald testified that both the landlord and she personally are willing and prepared to accommodate Mr. Downey, where he relies on his wheelchair. However there are others in the building with walkers and wheelchairs whose home care workers do their laundry. She testified there are numerous small complaints brought on behalf of Mr. Downey. She attempted to work with the community worker who advised Mr. Downey. Ms. MacDonald describes Mr. Downey as noncompliant and uncooperative. She testified there was no documented evidence of depression of the type stipulated by Mr. Downey.

(30) Ms. MacDonald stated that the only time she met Mr. Downey's dog, it jumped on her and scratched her. Mr. Downey indicated the dog was in training since it was four months old. Ms. MacDonald does not believe it was ever intended to be a service dog.

(31) Ms. MacDonald testified that MRHA requires proof similar to what CNIB issued for a seeing-eye dog. Dogs are not permitted in an apartment building. She is unaware of any other tenants with dogs. She testified that lease violation letter was sent in

October 2016. When she met Mr. Downey's dog, she had only been employed with MRHA a short time and did not know of Cleo's status.

(32) Ms. MacDonald testified that it is not within her authority to determine whether the credentials are sufficient to qualify the dog as a service dog. She confirms that Mr. Downey was involved in some of the advocacy roles in the building but this was prior to her arrival.

#### Jamie Vigliarolo

(33) Jamie Vigliarolo is the Director of the Metro Regional Housing Authority. His role is to administer the housing portfolio along with the development and oversight of all policies and procedures. He confirmed that Ms. MacDonald reports to a senior property manager who in turn, reports to Robert Lundrigan. Mr. Lundrigan and others report to Mr. Vigliarolo. He has been in that position for two years.

(34) Mr. Vigliarolo testified to having interactions with Mr. Downey. Specifically the discussions concerned requirements to keep the dog in the building, namely, proper certification. They also spoke causally at public meetings at the building with political figures during election time which both he and Mr. Downey attended.

(35) Mr. Vigliarolo testified that pets are not permitted because they can be challenging in multi-apartment buildings. The property does not allow dogs unless it is possible to allow the dog direct access to the outside from the unit. The only property owned by MRHA where this arrangement exists is in Hubbards. There are none in or around the former City of Halifax or in Dartmouth. According to Mr. Vigliarolo, the Pet Policy is designed to discourage interaction between a tenant's dog and other tenants, particularly if there are allergies or phobias on the part of some tenants. Mr. Downey was scheduled for eviction because he did not have the proper documentation to show his dog was a service dog.

(36) Under cross-examination, he testified that Mr. Downey only has the dog tag. He does not have what is in their opinion sufficient proof of the reasons for the service dog. He was unable to testify to any efforts on the part of the Housing Authority to accommodate Mr. Downey. He believes they would have attempted to find a more suitable and accessible building for him had the need been noted on his application.

#### Robert Lundrigan

(37) Robert Lundrigan is the client service manager for the Metro Regional Housing Authority. He has been in that position for four years. During that time he has had several opportunities to interact with Thomas Downey.

(38) Mr. Lundrigan's first interaction with Mr. Downey occurred at a meeting of the Tenants' Association. There was apparently some difficulty involving the Tenants' Association and Mr. Downey. That issue is not relevant to this hearing.

(39) On a later date, the Housing Authority decided to visit Mr. Downey to address a claim he had a top loading washer. The Landlord gave the Tenant 24 hours notice. When they arrived at the door, Mr. Downey positioned the wheelchair such that they could not enter the apartment. The Landlord's employees were kept in the alcove and denied their request to view the washing machine. Mr. Downey's response was to take the complaint to Residential Tenancies. Mr. Lundrigan testified the tenants typically obtain written permission to make a change provided that is done within the Building Code. There are typically no alterations to the plumbing and heating as that necessarily has an impact on the rest of the building.

(40) He confirmed Ms. MacDonald's testimony that tenants are typically not allowed to have a pet. He advised Mr. Downey to that effect. The reason the Housing Authority does not like to have dogs is due to the size of most public housing units which are very small. They do not wish to have a larger concentration of them. Furthermore, there are those with allergies or fears of dogs in the building. He confirmed Mr. Downey was sent a lease violation letter indicating the alleged breach. He testified that Mr. Downey struck him as somebody who does not take well to being told "no". He regularly called the MLA to deal with his problems.

(41) In cross-examination, Mr. Lundrigan testified that the lease violation letter was not the final notice but a notice or a warning of a violation. The building is a "dog free" building and one must request permission to bring a dog in the building. Furthermore, in Mr. Lundrigan's opinion, the dog was a pet and met none of the requirements provided in the lease to be a service dog.

(42) He confirmed there were no complaints of barking. There were only two episodes of Cleo jumping on people when uninvited, a tenant and Ms. MacDonald. Mr. Choo tendered into evidence two letters written by Mr. Downey's doctor indicating he would benefit greatly from a service dog or that he requires one. These are addressed more fully later in the decision.

(43) Mr. Lundrigan confirmed there were no offers to assist Mr. Downey to find other accommodations because he was not asked to do so. When shown by Ms. Davison a statement in MRHA's policy providing that eviction is a matter of last resort, he confirmed that is the approach.

(44) In redirect evidence, Mr. Lundrigan described discussions regarding Mr. Downey's dog that took place before coming to court. There is a long process to get to the point of eviction. He attempted to discuss matters with Mr. Downey but he would not cooperate.

## **Evidence of the Tenant**

Thomas Downey

(45) Thomas Downey has lived in the premises for approximately four and a half years. He has lived alone during that time except for his dog, which has been there for slightly less than two years. At the time he moved into the premises, he was severely depressed describing himself as suicidal. He was living with his partner, George Hubert. Mr. Downey described himself as “not the nicest person” at the time.

(46) He described for the Court what was clearly a time of great personal tragedy. Mr. Downey’s injury occurred 13 years ago as the result of an accident. His spine was damaged and he was confined to a wheelchair. He was hospitalized for an extensive period of time. Two days prior to his release, his mother passed away. His brother died at his mother’s funeral. He and his long time partner, Mr. Hubert, ended their relationship four years ago. He described this timeline as one where he lost a lot of his friends.

(47) He described his work as part of the Tenants’ Association. He was able to get cameras over the entrance for each building and some of the carpets replaced in the hallway. There were concrete blocks placed around the gazebo.

(48) He described the process of registering a service dog. He tendered into evidence two letters from his doctor. One letter states that it would be beneficial if he had a dog. The other letter says he is required to have a dog. He has felt better since he purchased Cleo.

(49) Cleo is now receiving training from Camillia Saunderson. He paid a fee which purportedly provides a lifetime of training. Cleo has undergone six classes so far. A letter has been tendered into evidence from Ms. Saunderson describing what appears to be obedience training for the dog. Mr. Downey confirmed that Cleo had jumped on several people but he attributed that behaviour to Cleo being a puppy.

(50) Prior to moving into the building he had lived in his family home first with his parents and then with Mr. Hubert. He had not lived in an apartment building before moving into the premises. His parents owned dogs as did he and Mr. Hubert.

(51) With respect to the alterations to the premises, he testified that he was given permission by Ms. MacDonald's predecessor, Catherine Shanks, to make changes. However, everything must be changed back to its condition when he moved out. He purchased the front loading machine as he finds it difficult to access a top loading washer. From time to time, he does his own laundry and finds a front loading machine more convenient.

(52) Under cross-examination, Mr. Downey acknowledged signing the lease but indicated he had not actually read it before taking any actions. He further stated that he did not think it necessary to “read all the formalities”. He testified that he did not consult with the Housing Authority for any of the changes or any of the rules regarding pets.

(53) He received two letters from Dr. Verma, one indicating that he would benefit a great deal from a service dog. He testified that the different wording was necessary for



the HRM to license Cleo as a service dog. He tendered into evidence a letter from the HRM enclosing a tag.

(54) He acknowledges a thorny relationship with Angela MacDonald. His evidence essentially is that he felt she was being unfair. He confirmed leaving a message telling Ms. MacDonald to keep her mouth shut. He saw several other tenants in the hallway when he has his dog outside the apartment. He confirmed his dog is not a “seeing eye dog” or “a mobility assist dog”. Cleo’s role is as an emotional support dog.

#### Evidence of Other Tenants and Friends

(55) Each party called witnesses to support their respective positions. These witnesses were tenants, except for Mr. Hubert. I have summarized each witness’ evidence below:

##### *Johanna Hiebert*

(56) Ms. Hiebert has lived in the building for 11 years and is acquainted with Mr. Downey. She had complained about Cleo being in the building. She spoke with Mr. Downey about exercising the dog in the hallway. She reported Mr. Downey to the landlord as Mr. Downey followed her around and called her names such as “a crazy old woman”. She described an incident where she was approached by Mr. Downey inside Sobeys on Mumford Road. She described that confrontation as making her feel terrible. She does not believe Mr. Downey’s dog is a service dog and everyone else should be allowed to have a pet if Mr. Downey is permitted. She describes herself as having friends in the building. She “loves dogs” but does not have one of her own.

##### *Jacquelin Stevens*

(57) Jacquelin Stevens is a tenant in [address removed]. She has lived there for seven years and she has been friends with Mr. Downey for two years. She described him as an excellent neighbour and good for the building in that he pushed to get the hallway in the building resurfaced, the old carpets removed and a walkway around the gazebo.

(58) She has known Cleo since she was a puppy. Ms. Stevens describes her as a beautiful animal, mannerly and sociable. She describes the dog as having a positive effect on Mr. Downey, or in her words, “provides him with a reason to live”.

(59) Under cross-examination, she did not know of any capital expenses being considered for any of the improvements made. She described having a close relationship with her pet cat. She acknowledges it is not a service animal.

##### *George Hubert, Jr.*

(60) Mr. Hubert was Tom Downey's common-law partner for 23 years. They have known each other for 30 years. Their relationship ended four years ago. They had lived together in Mr. Downey's family home on [address removed] for 22 years when the two of them owned the property together. Mr. Downey was in a wheelchair for the past 13 years. Mr. Downey's parents' owned that property at first and then he and Mr. Downey took it over themselves. There were dogs in the house for as long as he could remember. There were never any issues or behaviour concerns with the dogs.

### *Paula Norsworthy*

(61) Paula Norsworthy has known Tom Downey their entire lives having grown up on the same street. She confirmed some of the changes to his apartment. She described Cleo as a friendly dog. The dog helps Tom "get up and out the door". According to Ms. Norsworthy, the dog uplifts him.

### **The Lease**

(62) The parties entered into a lease dated October 31, 2013. The rent is \$203. The premises are public housing premises which are subject to their own unique set of rules. There are several schedules attached to the lease. The first two are the Statutory Conditions prescribed in s. 9 of the *Residential Tenancies Act*. The second schedule is entitled Tenant's Rules while the third is the aforementioned Metro Regional Housing Authority (MRHA) Landlord Rules. Ironically, the "Tenant Rules" set out several Tenants' covenants but mostly deal with issues relating to the Landlord, such as how rent is calculated by the Landlord. The Landlord Rules prescribe standards of behaviour to be followed by tenants.

(63) The relevant provisions are set out as follows:

#### *Tenant Rules*

(64) The first section of this schedule is entitled, "Tenant's Covenants". Paragraph 2(d) thereof provides:

"You shall not make any changes or alterations to the premises without first obtaining written approval from the housing authority."

(65) The next section is entitled "Pets" and stipulates the following:

"Different types of buildings have different rules concerning pets. Please consult the housing authority for permission before getting a pet."

#### *MRHA Landlord Rules*

(66) The Schedule begins with the following:

“These rules are established pursuant to section 9A of the *Residential Tenancies Act*. They apply to the Tenant and are in addition to all Terms and Conditions of the Lease Agreement between the Metropolitan Regional Housing Authority and the Tenant. The Tenant hereby agrees and covenants to comply with these Rules. Failure to comply with these rules may result in early termination of the tenancy by the Landlord.”

(67) Paragraphs 28 through 42 inclusive, deal specifically with pets in the premises. I have cited the most salient provisions:

“28. Tenants must have prior written permission from the Property Manager to keep any pet in their unit.

29. Tenants are not permitted any dogs in an apartment building.

30. Tenants are permitted a maximum of one pet (other than a dog) in an apartment building. The pet must be properly housed and must remain in the unit of the pet owner. No pet is permitted to roam or visit other areas of an apartment building.

33. Tenants must comply with all provincial legislation and municipal by-laws relating to the care and registration of a pet at all times.

41. Tenants must ensure that dogs are on a leash at all times outside on MRHA properties. There are no “off-leash” areas on any MRHA properties.

42. Requests by a tenant for approval to keep a “service animal” in their unit must be supported with documentation regarding the need for the service animal and the qualifications of the service animal. All reasonable requests for a service animal will be approved.”

## The Law

(68) The *Residential Tenancies Act* governs all landlord and tenant relationships in Nova Scotia. The Act prescribes a standard form of lease which allows for reasonable rules provided they comply with the requirements of section 9A of the Act. Section 9A stipulates as follows:

### Landlord’s rules

9A (1) A copy of reasonable rules established by a landlord that apply to the residential premises shall be given to a tenant prior to executing a lease.

(2) Rules may be changed or repealed upon four months notice to the tenant prior to the anniversary date in any year.

(3) A rule is reasonable if

(a) it is intended to

(i) promote a fair distribution of services and facilities to the occupants of the residential premises,

(ii) promote the safety, comfort or welfare of persons working or residing in the residential premises, or

(iii) protect the landlord’s property from abuse;

(b) it is reasonably related to the purpose for which it is intended;

(c) it applies to all tenants in a fair manner; and

(d) it is clearly expressed so as to inform the tenant of what the tenant must or must not do to comply with the rule.

(69) I find the above cited sections of the “Tenants Rules” to be reasonable rules as they have met the requirements of this section. Conversely, the document entitled “Pet Policy – Rules and Regulations” did not meet the requirements of subsection (1). It did not form part of the lease and it was not distributed prior to its execution. It is an internal document for reference by the MRHA. It is evidence of the Landlord’s interpretation of the Lease. It is not binding and enforceable as against the Tenant. I find it is not a reasonable rule such that it forms part of the lease.

(70) For the following reasons, I find the *MRHA Landlord Rules* to be reasonable rules.

(71) It has not been challenged that the rules were given to the tenant by the landlord prior to executing the lease. There is no evidence that any rules were changed or repealed. Therefore, I find the requirements of section 9A (1) and (2) to have been met. It is necessary to consider the requirements of subsection (3).

(72) The reasoning behind the Rules relating to pets and the corresponding policy are to provide a system of guidelines to allow certain animals on the premises to remain in their owners’ apartments or other units, and prohibit those from being on the grounds. The Rules do not differentiate between one tenant and another. It provides accommodation for those who require service animals.

(73) The intent of that collection of rules is to protect the landlord's property from abuse and promote the safety, comfort and welfare of persons residing or working in the residential premises by placing controls over what pets are permitted in the building. The rules require MRHA approval. It requires dogs to be able to access the outdoors and not be allowed to run free or remain chained outside. All requests for dogs in permitted buildings must have the approval of landlord. The Landlord Rules are very straightforward. Given the large number of residential units, the various levels of comfort or fear of certain animals on the part of others, the rules are reasonably related to the intention.

(74) Nowhere in the lease does it stipulate that the building is an apartment building. However, it is clear on the evidence that it is.

(75) I find MRHA Landlord Rules, paragraphs 29, 29, 30, 33, 41 and 42 are reasonable rules.

## **Findings**

(76) Having found the rules to be reasonable rules, it is necessary to determine if Mr. Downey was in breach of those rules. As it relates to the provisions dealing with service dogs, I find Mr. Downey was in breach.

## **Service Dog**

(77) As noted at the outset of this decision, the law relating to service dogs or service animals is not clear. There is a provincial statute on the books known as the *Service Dogs Act*, which has received Royal Assent but has not yet been proclaimed in force. There are several Federal statutes and regulations which protect animals in the service of law enforcement, the military or that are required by passengers on trains and planes. These are not applicable to residential tenancy situations. The Court must consider the applicable municipal law.

(78) Halifax Regional Municipality By-Law A-700 provides a procedure for the registration and licensing of animals. Subsection 6(1) stipulates the information required. Subsection 6(2)(b) requires the owner of a service animal to provide the following additional information:

“(2)(b) a certificate from a qualified medical practitioner indicating that the owner suffers from a disability and requires the use of a service animal that is trained to assist persons with such disabilities.”

(79) A service animal is defined in s. 2(x):

“ ‘service animal’ means any animal that is a licensed service animal under this By-law and:

(i) any animal individually trained to do work or perform tasks for the benefit of an individual with a disability;...

(ii) any animal used for search and rescue or law enforcement purposes.”

(80) Subs. 2(x)(ii) deals with search and rescue and law enforcement, which is not applicable.

(81) The Landlord’s Rules require proof of both the tenant’s need for a service animal and the qualifications of the animal. As noted, these are reasonable rules, as they are consistent with existing law. Furthermore, they prevent any erroneous claims by a tenant, or anyone else on the property, that a particular animal is a service animal without justification.

(82) In reviewing the evidence, it is clear Mr. Downey did not seek approval from the landlord to have Cleo in the premises. Indeed, he did not even provide notice. Any attempts to deal with her presence were met with great resistance on his part. His actions, as for most issues relating to his tenancy, were decidedly uncooperative and outwardly provocative.

(83) The licensing of Cleo only took place after the Lease Violation letter in May 2016. The medical reports from Dr. Verma were prepared in December 2016 and April 2018. The obedience training started in March 2018. Based on the strict language of the lease, it is possible to find Mr. Downey in breach of the lease for the grounds listed above. However, I prefer to determine if Cleo was ever a service dog.

(84) The tenant has tendered into evidence a letter dated June 23, 2017, from the Halifax Regional Municipality confirming a service dog tag was sent to Mr. Downey for

Cleo. The letter is signed by Catherine Smith, a Customer Service Representative with the HRM. Unfortunately, nobody from HRM gave evidence as to the criteria they used to satisfy themselves that Cleo was qualified to be a service animal. I find she was registered as a service animal. No criteria are set out to show her qualifications. There is nothing in the By-Law which addresses qualifications of a service animal. Further, if it were the intent of the HRM or other legislature to establish this registration as sufficient proof of eligibility as a service animal, the legislation would have stipulated. Where the law is not as clear as it could be, it is proper to address any additional criteria in the lease.

(85) Both the By-Law and paragraph 42 of the Landlord Rules require medical proof that a person has a disability and needs (or requires) a service animal. The Tenant tendered two reports from Dr. Bharti Verma. The first report dated December 15, 2016, indicates that Mr. Downey suffers from paraplegia due to a spinal cord injury along with severe depression and he will “benefit a great deal from a service dog”. On April 4, 2018, Dr. Verma reported that Mr. Downey “requires the use of a service dog for medical reasons”.

(86) Dr. Verma was not called to give evidence. Therefore, there is no explanation why Mr. Downey’s condition has changed from benefitting a great deal from a service dog to requiring a service dog. I agree the change in language was done to ensure the letter meets the requirements of the By-Law. I do not believe anything turns on that. The line between the two can be a fine one. Whether a service dog is a need or a great benefit for Mr. Downey, each are supported by a medical opinion that is not refuted. As of at least April 4, 2018, I find Mr. Downey needs a service dog to address his mental and emotional needs arising from his paraplegia. This requirement has been satisfied.

(87) As for the dog’s qualifications, I find Cleo was not qualified as a service animal when she was acquired by Mr. Downey. Without evidence, I find it very difficult to believe that a six week old puppy could be qualified as a service animal. The only independent evidence of her current training is a letter from her trainer certifying that she has received obedience training. In order to properly assess the qualifications of Cleo as a service animal, it is necessary to have further details of the type of service animal Mr. Downey requires and the certification by a veterinarian or other expert that Cleo is eligible and qualified for that purpose. Neither are present.

(88) However, it is also clear that Mr. Downey has been training Cleo to act as a service dog.

(89) Given the lack of evidence, I am unable to find Cleo is a service animal provided in the lease. Accordingly, her presence in the premises is a violation of the lease.

(90) Mr. Downey has testified that it is difficult to find alternate premises in a public housing setting due to his disability and need for a service animal. In his evidence, Mr. Lundrigan testified that the Landlord would be willing to entertain a request by Mr. Downey to return to the building provided certain steps would be taken. This would have

to be reviewed by a committee at the MRHA designed to review such requests.

(91) Despite finding a violation, I am not prepared to order Mr. Downey to give vacant possession of the premises. However, any dog he wishes to keep in the premises must be a service animal known to the Landlord. If he wishes to retain Cleo, the dog must be trained or in training to become certified. The form of order will address the date and time for removing Cleo or proving she is trained.

(92) As I intend to release this decision, I think it important to stipulate that this remedy is fact specific. It is not intended to be precedent setting. Any service animals required by a tenant should be disclosed in advance with appropriate proof. The solution in this case is practical given the dog's current training. It would be redundant to order Cleo removed if she were now trained.

(93) I do not think it appropriate to evict Mr. Downey. Mr. Lundrigan testified that Mr. Downey will be given the opportunity to meet with the tenants committee to establish whether he is willing to address the situation causing his eviction. I am prepared to find and to order that Mr. Downey be permitted to remain in the building but he can only have a service animal. I will give him the opportunity to prove to the landlord that Cleo is in fact a service animal. If not, then the dog must not be permitted to remain in the building. Mr. Downey can remain there on his own or with a different service animal. Mr. Downey may not bring any other animal other than a service animal permitted in accordance with the terms of the lease without the express permission of the landlord.

### **Washer**

(94) Mr. Downey did not seek permission to use a front loading washer. The reason he gave is logical and appropriate. He is in a wheelchair and likes to do his own laundry. He can only reach this with a front loading model. In my view, this is a reasonable request. I shall order that the washer may remain provided that it has met the safety and suitability requirements by the landlord. If it does not, he is permitted to acquire a different model that is.

### **Alterations**

(95) The tenant has made changes to the unit including grab bars and other means of accommodating his disability. Clearly, it is reasonable to allow him to make those changes. They must be done in a safe manner that allows him the accommodation he requires without damaging the premises or affecting the enjoyment of others. I am certain this can be attended to by both parties in a reasonable manner. The tenant must return the unit to its reasonable state, subject to the requirements of reasonable wear and tear.

### **Summary**

(96) Accordingly, it is ordered, the tenancy shall remain in effect, subject to the terms of the Order filed herein.

Dated at Halifax, NS,  
on June 12, 2018;

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**Gregg W. Knudsen, Adjudicator**

Original:	Court File
Copy:	Landlord(s)
Copy:	Tenant(s)