

**ANIMALS ARE NOT ALLOWED IN MY APARTMENT BUILDING**

You live in an apartment building. Your lease has a clause prohibiting animals in the leased premises. Can you contest that clause? On what grounds?

THE FACTS

A woman had been living with her little girl in an apartment cooperative since April 28, 1999. Her lease stated that no animals were allowed in the apartments. However, the woman in question had a cat since March 2003. She had decided to get one at the suggestion of her daughter's psychologist as a form of pet therapy. The animal's presence was required to help the child with her anxiety disorder. When the board of directors of the cooperative learned that she had a cat, it adopted a resolution to apply the «no animals» clause. The tenant applied for a derogation of the rule given her daughter's particular situation. If the derogation would not be granted, she asked that the clause in question be declared abusive. The landlord then instituted an action before the Régie du logement, which ordered the tenant to get rid of the cat by June 30, 2004. The tenant appealed that decision to the Court of Québec.

THE ISSUE

Can a clause prohibiting animals in a rental building be regarded as abusive?

THE DECISION

The clause was considered to be abusive. The judge allowed the tenant's appeal.

THE GROUNDS

In his analysis, the judge focused on the clause in the lease prohibiting animals. Is it abusive or not? He stated that in itself, such a clause is not abusive. However, it may become so in a situation such as the one under consideration. Nothing actually indicated that the cat's presence in the

apartment posed a problem for the landlord. Also, the expert evidence indicated that the animal's presence was beneficial for the child's health. The judge therefore held that in these particular circumstances, the clause was abusive. Therefore, he ordered that application of the clause be suspended for the duration of the little girl's pet therapy. He therefore allowed the tenant's appeal and dismissed the landlord's application to have her get rid of the cat.

References

J. L. v. Coopératives de l'Ébène, Court of Québec – Civil Division (C.Q.) Chicoutimi 150-80-000069-042, November 30, 2004, Judge: Pierre Lortie (J.E. 2005-143; available on the Web at the following address: www.jugements.qc.ca)

Civil Code of Québec, (S.Q. 1991, chapter 64), section 1901.

NOTE TO READERS

The defense of pet therapy is difficult. The evidence must be persuasive. Some judgements refused to consider that defense.

The judgement discussed in this article was rendered based on the evidence submitted to the court.

Each situation is unique. If in doubt, we suggest you consult a legal aid lawyer.

Contact us

Commission
des services juridiques
2, Complexe Desjardins
Tour de l'Est, bureau
1404
C.P. 123
Succursale Desjardins
Montréal (Québec)
H5B 1B3

Phone : 514 873-3562
Fax : 514 873-8762
www.csj.qc.ca