



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing and Social Development

## **DECISION**

Dispute Codes      CNC, FF, O

### Introduction

This hearing dealt with the tenants' request to cancel a *1 Month Notice to End Tenancy for Cause*, recovery of the filing fee and other issues. Both parties appeared at the hearing and were provided the opportunity to be heard and respond to the other parties' submissions.

It was determined that the parties had not served each other with their documentary evidence and I could not accept the evidence with the exception of the photographs. The tenants stated they did not have an objection to my review of the photographs of the property sent in by the landlord so as to have a better understanding of the condition of the property.

### Issues(s) to be Decided

1. Has the landlord established a basis for ending the tenancy for cause?
2. Award of the filing fee.

### Background and Evidence

Upon hearing testimony of both parties, I make the following findings. The tenancy commenced nearly three years ago. There is no written tenancy agreement and a move-in inspection was not conducted by the parties. At the commencement of the tenancy the tenants had two dogs and two cats that the landlord knew about. Currently, the tenants have one of the original dogs, two additional dogs and no cats. In July 2008 the landlord wrote a letter to the tenants advising them to that they are to keep no more than two dogs. On May 22, 2009 the landlord issued a *1 Month Notice to End Tenancy for Cause* (the Notice) and served it upon the tenants by registered mail, indicating the reasons for ending the tenancy are:

- Tenant has caused extraordinary damage to the unit or property, and
- Breach of a material term of the tenancy agreement that was not corrected within a reasonable amount of time after written notice to do so.

A mutual agreement to end the tenancy was attempted during the hearing; however, the parties could not agree on a date to end the tenancy. Therefore, I proceeded to hear

from the parties as to whether there is a basis to end the tenancy for the reasons cited by the landlord on the Notice.

With respect to the breach of a material term, the landlord cited the tenants keeping a total of three dogs at the property without the landlord's permission and despite written notice in July 2008 that communicated the landlord wanted no more than two dogs at the property. The landlord indicated that she wanted the tenants to remove the most recent dog the tenants acquired which was described as a Husky dog.

The tenants responded by saying they were not told at the commencement of the tenancy that they were limited to two dogs and the landlord appeared unconcerned that they had four pets. The tenants pointed out that they have only three pets currently.

The landlord was asked to describe the extraordinary damage allegedly caused by the tenants. In summary, the landlord described the following damages:

- The dog(s) have scratched and gouged the back door.
- The tenants have built a large dog pen and attached it to the porch without permission or permits.
- The dog(s) have dug holes in the ground next to the foundation wall.
- The tenants have put holes in the plaster ceiling.
- The tenants have removed carpet, windows and the door from the rear porch.
- The tenants have replaced some of the kitchen cabinet pulls.
- An antique door handle has gone missing.
- The tenants removed the carpet from the basement.
- The tenants have attached unsightly plywood to the front gate.

In summary, the tenants responded to the landlord's allegations as follows:

- The tenants will repair the door scratched by the dog(s) before the end of their tenancy.
- The tenants will remove the dog pen.
- The tenants have filled in the holes dug next to the foundation by the dog and will continue to fill in holes as they occur in the future.
- The tenants drilled two holes in the ceiling to install hooks to hang plants but there were already a couple of holes in the ceiling when they moved in.
- The tenants acknowledged removing carpet, windows and the door from the porch. The tenants testified that the glass was cracked when they moved in and that the glass continued to fall out so they removed it for safety reasons. The tenants testified the carpet in the porch smelled and had mushrooms growing in it and the door did not fit properly. The tenants described how the landlord's husband had told them it was the landlord's intention to remove the porch.

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- Some of the kitchen cabinet pulls were replaced as the old ones were falling out or stripped.
- The antique door knob was loose and fell off and the tenants have stored it in a closet in the rental unit.
- The tenants removed the carpet in the basement as it was mouldy and smelled of pet odours from the landlord's pets. The tenants claimed that the basement leaks every spring and that there are no eavestroughs on the house.
- The tenants put plywood on the front gate as the gate was falling in disrepair and was dragging on the grass.

Upon hearing testimony of both parties and reviewing the pictures of the property I find the house was constructed in the early 1960's and most fixtures appear to be original. The rear porch was constructed over 25 years ago. The landlord had the roof repaired last year but was not aware that eavestroughs were not installed until this past spring.

## Analysis

Upon hearing all of the testimony during the hearing and upon review of the photographs, I make the following findings with respect to the merits of the issuance of the Notice.

### **Breach of material term**

To end a tenancy for breach of a material term a landlord must establish that the tenant breached a material term and the tenant did not rectify the breach within a reasonable time after written notice was given to do so. A material term is a term that the parties both agreed is so important that the most trivial breach of that term gives the other party the right to end the agreement. It falls to the person relying upon the term, which is the landlord where a landlord is seeking to end a tenancy, to present evidence that the term was material.

By definition, tenancy agreements do include oral agreements and in this case there is an oral tenancy agreement. However, as the landlord acknowledged that there was not much discussion with respect to keeping pets on the property when the tenancy agreement was formed I find the landlord failed to show that the both parties had agreed at the commencement of the tenancy that the tenants would be restricted to keeping no more than two dogs and that the tenants knew a breach of that term would be so material that their tenancy would end. Therefore, I do not find the tenants breached a material term of their tenancy agreement and keeping of three dogs is not grounds for ending the tenancy.

## **Extraordinary damage**

Under section 32 of the Act, both the landlord and tenant have certain obligations with respect to repairing and maintaining a property. A landlord must ensure the property complies with health, safety and building standard laws and that the rental unit is suitable as living accommodation. The tenants must ensure that they maintain reasonable sanitary and cleanliness standards and repair damage to the rental unit or common areas that is caused by the actions or neglect of the tenant or a person permitted on the residential property by the tenant. Tenants are not responsible for repairing normal wear and tear.

In order to end a tenancy for extraordinary damage under section 47(1)(f) of the Act, the landlord has the burden to prove the tenants caused extraordinary damage to the property. Causing damage is not the same as extraordinary damage and causing damage is not sufficient to end the tenancy; rather, the tenant is responsible to repairing damage. Extraordinary damage is damage of a greater degree than damage and would be caused by wilful or negligent acts of the tenant. The use of the word extraordinary in the Act designates the damage as an occurrence other than that which would be ordinarily experienced or would have been foreseen, anticipated or provided for.

With respect to the list of damages cited by the landlord, I find that the tenants' dogs have caused damage to the property, but I do not find it to meet the criteria of being extraordinary damage as dogs scratching at doors and digging holes is not a rare occurrence and is reasonably foreseeable.

In the absence of a move-in inspection report, the landlord did not sufficiently establish the condition of the rental unit at the commencement of the tenancy. Upon review of the photographs, I find it likely that the porch is not part of the original structure and I am not satisfied that it was built to the same construction standards as the dwelling. I find it reasonably likely that the porch was in need of repair and attention from the landlord at the beginning of this tenancy. Having to rely upon disputed testimony of the parties, I can not distinguish whether the tenants damaged the porch or were reacting to a porch that was in disrepair. Therefore, although the tenants acknowledged removing windows, carpet and the door from the porch I do not find sufficient evidence that the tenants' actions meet the criteria of extraordinary damage.

Although the tenants acknowledged removing the carpet in the basement, upon hearing of moisture issues in the basement, the lack of eavestroughs and upon observing the general age and lack of updating to the rental unit, I find it more likely than not that the carpet was likely at the end of useful life and due for removal or replacement. Thus, I do not find the removal of the basement carpets to be extraordinary damage to the rental unit.

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As to the remainder of the issues raised by the landlord, I find insufficient evidence of extraordinary damage. As explained to the parties during the hearing, the tenants are responsible for repairing any damages they cause or are responsible for causing, such as pet damage, before the end of their tenancy. In addition, if the damage places the property at risk of further damage the tenants must repair the damage immediately otherwise the neglect could be grounds for finding extraordinary damage. A landlord may make a monetary claim for losses the landlord incurs because of damages not repaired by the tenants by the end of the tenancy.

In light of the above findings, I cancel the Notice to End Tenancy issued on May 22, 2009 and the tenancy shall continue. However, I also recognize that the tenants have taken matters in to their own hands when the proper course of action would have been to communicate with the landlord about repairs needed at the property or to seek permission to alter the rental unit. To reflect discussions that took place during the hearing and in an effort to defuse any future disputes between the parties, I make the following orders upon the tenants:

- The tenants will remove the dog pen no later than 15 days after receiving this decision;
- The tenants will immediately fill in any and all holes dug by their dogs or dogs permitted on the property;
- The tenants will repair any damage caused by them or their pets by the end of their tenancy, except for normal wear and tear; and,
- The tenants must seek permission from the landlord before removing any fixtures from the rental unit or constructing anything affixed to the rental unit or property.

Failure to comply with these orders may be grounds for the landlord to end the tenancy for failing to follow orders of a Dispute Resolution Officer.

In addition, the landlord is ordered to make necessary repairs to the property including the installation of eavestroughs.

I award the tenants one-half of the filing fee paid for this application. The tenants may deduct \$25.00 from their next month's rent in satisfaction of this award.

## Conclusion

The Notice to End Tenancy issued May 22, 2009 is cancelled and set aside. This tenancy shall continue until such time it ends under the Act. The tenants are awarded one-half of the filing fee paid for this application.



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This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: July 14, 2009.

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Dispute Resolution Officer