



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

**Dispute Codes**      CNC

### **Introduction**

This hearing was convened by way of conference call to deal with the tenant's application for an order cancelling a notice to end tenancy for cause.

The tenant attended the conference call hearing, assisted by an advocate. An agent for the landlord company also attended. The parties gave affirmed testimony, provided evidence in advance of the hearing, and were given the opportunity to cross examine each other on the evidence and testimony provided. All evidence and testimony has been reviewed and is considered in this Decision.

### **Issue(s) to be Decided**

Is the tenant entitled to an order cancelling a notice to end tenancy for cause?

### **Background and Evidence**

The parties agree that this fixed term tenancy began on September 1, 2008 and expired on August 31, 2009, and then reverted to a month-to-month tenancy. The tenant still resides in the rental unit. Rent in the amount of \$560.00 per month is payable in advance on the 1<sup>st</sup> day of each month and there are no rental arrears. On August 29, 2008 the landlord collected a security deposit from the tenant in the amount of \$272.50.

The landlord testified that a series of complaints from other tenants have been received by the landlord's agents about a dog belonging to the tenant that has been left unattended. Copies of the written complaints were provided in advance of the hearing, and the first is dated May 1, 2011 which states that a dog was on the balcony of the tenant's unit without its master present. The next is dated May 23, 2011 but states facts and does not read as a complaint from the tenant. The statement describes two incidents with the dog, one on May 23, 2011 and one on May 25, 2011, and in both cases, the tenant describes the dog as being unattended and rescued by the manager, or an attempt at rescuing the dog from harming itself.

The tenancy agreement, a copy of which was provided in advance of the hearing states that no pets are permitted, however, the previous management and the tenant completed and signed a Pet Agreement Exemption on January 5, 2011, a copy of which was also provided in advance of the hearing.

The landlord's agent further testified that other tenants have also complained in writing about the tenant smoking marijuana in the rental unit. Copies of the written complaints have been provided, the first of which is dated April 8, 2011 which states that the floor "reaked of marijuana" and no one was home except the landlord's agent, "who witnessed smell and tenants in unit 308." The second is dated April 14, 2011 which states that the smell was potent outside the door of this tenant's unit. The third is from the landlord's agent who was not the manager of the building at the time. The landlord's agent testified that he has recently taken over as manager of the apartment complex. The note he issued states that he would like to see something done about the problem of the tenant smoking weed in the apartment, the smoke and smell fills the hallways, and he has asthma.

The landlord also provided copies of Incident Reports, the first of which is dated April 6, 2011 which was completed by the person who was the manager of the building at the time. The report speaks to a smell of drugs and states that, "All other tenants were out as their vehicles were gone. That only left 308 which I could smell outside of door and another tenant 303." The next is also completed by the previous manager dated May 23, 2011 and states that the managers had been awakened by a barking dog, and upon looking out the window, the manager saw the tenant's dog trying to escape from a vehicle, and she attempted to catch the dog. It also states that she spoke to the tenant about the seriousness of leaving a dog unattended and disturbing others. The final incident report was also completed by the previous manager dated May 25, 2011 and it states that she was again awakened by a barking dog, and found a dog hanging from a window by a leash, and after rescuing the dog, the owner was notified, became irate and threatened to punch her husband in the face.

The only caution notice issued to the tenant is dated December 21, 2010, a copy of which was also provided in advance of the hearing, and it speaks to having a dog without the landlord's permission. The pet agreement was then signed by the parties on January 5, 2011.

The landlord issued a 1 Month Notice to End Tenancy for Cause and provided a copy for this hearing. The notice is dated May 25, 2011 and contains an expected date of vacancy of June 30, 2011. The landlord's agent testified that the notice was served on the tenant on May 25, 2011 by posting it to the door of the rental unit. The notice states that the tenant has breached a material term of the tenancy which has not been

corrected within a reasonable time after written notice to do so. When asked what the material term of the tenancy was that the tenant breached, the landlord's agent stated that it was issued by the previous manager, and believes the notice was issued after the tenant became irate on May 25, 2011 and threatened the manager. The landlord's agent was not able to produce a written notice given to the tenant except the one issued December 21, 2010 which was rectified with the Pet Agreement.

The landlord also testified that the tenant no longer has a dog, and the dog was gone by May 25, 2011. When asked if he or any other tenants have seen the tenant smoking marihuana, the landlord's agent responded that there were no eye witnesses to the tenant smoking to his knowledge. He also stated that the tenant pays rent on time, and is generally a good tenant.

The tenant testified that with respect to the incident described by the landlord's agent on May 25, 2011, the tenant's son had been yelled at by the manager, and the tenant became defensive about it. The dog had been given to his son as a gift, and the tenant found a good home for the dog and the dog was given away on May 25, 2011, the same day as the incident and the same day that the notice to end the tenancy was issued.

The tenant also testified that upon signing the Pet Agreement, he paid the landlord a pet damage deposit in the amount of \$273.00. The landlord still holds that deposit in trust.

The tenant also submits that no one has seen him smoke marihuana and therefore the evidence cannot be relied on. The tenant has been residing in the rental unit for almost 3 years and does not want to move.

### **Analysis**

I have reviewed the evidence of the parties, and the 1 Month Notice to End Tenancy for Cause in particular. The notice states that the reason for ending the tenancy is: Breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so. In the evidence before me I cannot conclude what the material term was that the tenant has breached nor can I conclude that the tenant was given any written notice or a reasonable time to correct the breach. I find that the landlord has failed to establish the grounds for ending the tenancy, and the notice to end the tenancy should be cancelled.

### **Conclusion**

For the reasons set out above, the tenant's application is hereby allowed; the notice to end the tenancy is hereby cancelled, and the tenancy will continue.

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: June 21, 2011.

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Residential Tenancy Branch