



# 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 in response to an application made by the tenant for an order cancelling a notice to end tenancy for cause.

The tenant and an agent for the landlord company both attended the conference call hearing and gave affirmed testimony. The landlord also provided evidence in advance of the hearing to the Residential Tenancy Branch and to the tenant, and called a witness who gave affirmed testimony. The parties were given the opportunity to cross examine each other and the witness on the testimony given and evidence provided, all of which 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 landlord's agent testified that this month-to-month tenancy began on December 21, 2011 and the tenant still resides in the rental unit. Rent in the amount of \$534.00 per month is payable in advance on the 1<sup>st</sup> day of each month and there are no rental arrears. The amount of rent payable is subsidized. At the outset of the tenancy the landlord collected a security deposit from the tenant in the amount of \$671.00.

The landlord's agent further testified that the tenancy agreement at paragraph 15 states: "15. PETS: NO dogs, cats or fur-bearing animals are allowed on or about the Premises, even temporarily or with a visiting guest, without the landlord's prior written consent, excepting guide dogs. Any such consent is conditional upon the tenant completing and signing an owner's pet agreement, which shall become part of this Agreement."

The landlord's agent testified that the pet rule was agreed to by the tenant and is a material term of the tenancy. The landlord issued a number of breach letters to the

tenant and provided copies for this hearing. The breach letters describe the breach of the material term regarding pets, as well as smoking marihuana inside the rental unit, and smoking is also prohibited according to the tenancy agreement. A neighbour has called the landlord's agent and has sent numerous letters to the landlord's agent complaining about the marihuana smell coming from the rental unit, and that the neighbour has a child with asthma which has been irritated by the smoke and has caused the child to rely on inhalers more often than usual.

Two of the tenant's guests continually bring their dogs to the rental unit, but usually leave them in the vehicles. However, on at least one occasion, a dog has escaped from a vehicle parked at the rental unit. The guest retrieved the dog and put it back in the car. The other guest also has a dog of a different breed which has been seen on the premises on numerous occasions.

The landlord's agent caused a 1 Month Notice to End Tenancy for Cause to be issued to the tenant, a copy of which was provided for this hearing. The notice is dated April 24, 2012 and contains an expected date of vacancy of May 31, 2012. The site manager told the landlord's agent that the notice was posted to the door of the rental unit on April 24, 2012. The reason for issuing the notice is stated to be: "Breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so."

The witness for the landlord testified to being the site manager of the complex and has been for several years. The witness saw a dog belonging to the tenant's guest on April 8, 2012 when the witness attended the unit next door which is occupied by a family member of the witness. The dog was chasing some children, and another dog was in a car in front of the rental unit. The witness knocked on the door of the rental unit and told the tenant that no dogs are allowed. The witness then saw the friend of the tenant pick up the dog that was chasing the children and place it in a car. The other dog was still in the other vehicle parked outside the rental unit. While there, the witness smelled marihuana in the rental unit.

The witness served the tenant on April 24, 2012 with a copy of the 1 Month Notice to End Tenancy for Cause by posting it to the door of the rental unit on that date.

The witness also stated that on May 14, 2012 the witness was walking by the rental unit and noticed a car parked in front of the rental unit which contained a barking dog.

The tenant testified that the tenant's mother-in-law visits the rental unit from time to time and brings a dog, but the dog is always left in the car. Also, the tenant's ex-spouse attended over Easter and left a dog in the car. That dog got out, but was caught and placed back in the car. The tenant has told the guests to not bring dogs, and sometimes the tenant doesn't even know that they do bring a dog and leave the animal in a parked car. They don't bring their dogs anymore.

The tenant testified that the tenant's child also has asthma, and the tenant doesn't and can't smoke in the rental unit due to the child's health. The tenant has told the landlord's agents lots of times that any marihuana smell is not coming from the tenant's rental unit. The landlord's agents completed 2 walk-through inspections recently and no evidence of marihuana was brought to the tenant's attention.

### Analysis

I have read the breach letters provided by the landlord for this hearing, and I find that the tenant was well aware that the tenant's guests were not permitted to be on the property with a dog. The landlord's agent testified that the rule is a material term of the tenancy, which was not disputed by the tenant. I have also reviewed the tenancy agreement which is clear that no fur-bearing animals are allowed on or about the premises, even temporarily or with a visiting guest. A tenant is responsible for a tenant's guests.

I have also reviewed the notice to end tenancy given by the landlord. I find that the notice is in the approved form and complies with the *Residential Tenancy Act*. I accept the testimony of the landlord's witness that the notice was served on the tenant on April 24, 2012 by posting it to the door of the rental unit on that date. The notice is deemed to have been served 3 days later, or on April 27, 2012. I further find that the tenant has complied with the *Act* by disputing the notice within 10 days; the tenant's application was filed with the Residential Tenancy Branch on May 3, 2012.

In the circumstances, the tenant has admitted that the tenant's guests have brought dogs onto the property without the landlord's written consent. I also find that the landlord caused breach letters to be given to the tenant without any success in prevention of further breaches, and I find that the tenant has failed to establish that the notice to end tenancy was incorrectly issued or that it is invalid or that it ought to be cancelled.

Therefore, the tenant's application must be dismissed and the notice to end tenancy is hereby upheld.

Conclusion

For the reasons set out above, the tenant's application is hereby dismissed without leave to reapply. The notice to end tenancy is upheld and takes effect on May 31, 2012.

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: May 25, 2012.

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Residential Tenancy Branch