



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      Landlord: OPC, OPB, FF  
Tenant: CNC, FF

### Introduction

This matter dealt with an application by the Landlords for an Order of Possession and to recover the filing fee for this proceeding. The Tenant applied to cancel a One Month Notice to End Tenancy for Cause dated July 24, 2012 and to recover the filing fee for this proceeding.

### Issue(s) to be Decided

1. Does the Landlord have grounds to end the tenancy?

### Background and Evidence

This tenancy began on July 1, 2011 as a one year fixed term tenancy that on its expiry continued on a month-to-month basis.

The Parties' tenancy agreement contains a term that "no pets will be allowed without the prior written permission of the Landlord." The Landlord's agent, J.A., said when she took over as the resident manager for the Landlord in February of 2012, she noticed that the Tenant was accompanied daily by her sister and a dog. J.A. said she asked the Tenant if it was her dog but she claimed that she was only taking care of it for a short period of time, however the dog was still there a week later. J.A. said she was given instructions from her boss in June that all unauthorized dogs had to be removed from the rental property and as a result on June 12, 2012, she sent the Tenant a letter advising her to remove the dog within 14 days or she would be given a One Month Notice to End Tenancy.

The Landlord's agent, J.A., said the Tenant continued to have the dog in the rental unit and as a result, on July 5, 2012, the Landlord served the Tenant by registered mail with a One Month Notice to End Tenancy for Cause dated July 5, 2012 however it did not include the second page containing the grounds for seeking to end the tenancy. On July 24, 2012, the Landlord served the Tenant with another One Month Notice to End Tenancy for Cause by posting it to the rental unit door. The sole ground on that Notice

was “breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.”

The Tenant and her witness (who is her sister) claim that the dog belongs to the Tenant’s sister but visits often because it is therapeutic to the Tenant. The Tenant said the dog does not reside with her although she has kept it in the rental unit for a few days at a time. The Tenant argued that the previous resident manager gave her verbal consent for the dog to visit (which the Landlord’s agents denied). The Tenant also argued that there are other dogs residing in the rental property that have been there between 3 and 5 years and that they are allowed to stay (which the Landlord’s agents also denied). The Tenant further argued that the Landlords are selectively enforcing the “no pet” policy against her because she recently refused to sign a pool key agreement.

### Analysis

Section 52 of the Act says that a Notice to End Tenancy when given by a Landlord must state the reasons for seeking to end the tenancy. Given that the One Month Notice to End Tenancy for Cause dated June 5, 2012 is missing the second page containing the grounds for ending the tenancy, I find that it is unenforceable and it is cancelled.

RTB Policy Guideline #8 (Unconscionable and Material Terms) at p. 1 states as follows:

“A material term is a term that the parties both agree is so important that the most trivial breach of that term gives the other party the right to end the agreement.

To determine the materiality of a term during a dispute resolution hearing, the Residential Tenancy Branch will focus upon the importance of the term in the overall scheme of the tenancy agreement, as opposed to the consequences of the breach. It falls to the person relying on the term to present evidence and argument supporting the proposition that the term was a material term.

The question of whether or not a term is material is determined by the facts and circumstances surrounding the creation of the tenancy agreement in question.”

Given that the Landlord is seeking to end the tenancy by serving the Tenant with a Notice to End Tenancy, the Landlord has the burden of proof and must show (on a balance of probabilities) that the term of the tenancy agreement prohibiting pets is a material term and that the Tenant has breached it.

I find that the Parties’ tenancy agreement contains a clause prohibiting pets without the prior written consent of the Landlord. The Tenant admitted that she did not have the Landlord’s consent to have a dog but argued that the clause did not apply to visiting pets. The Landlord’s agents argued that the clause was general enough to include any and all situations. In this situation, I would agree with the Landlord’s agents that the clause can reasonably be construed to apply both to pets residing in the rental property

and those brought onto the property by guests. However, RTB Policy Guideline #28 (Pet Clauses) states at p. 2 in part as follows:

"In some cases a landlord may know of a pet being kept by a tenant in contravention of a pet clause and do nothing about it for a period of time. The landlord's mere failure to act is not enough to preclude him or her from later insisting on compliance with the pet clause. However, a delay may indicate that the pet clause is not considered by the landlord to be a material term of the tenancy agreement.

As well, if a landlord is aware of the breach of a pet clause and does not insist on compliance and does something which clearly indicates that the pet is acceptable, the landlord may be prohibited from ending the tenancy for that breach. This is called "waiver". It is important to note that it is not a waiver of the pet clause itself, but only a waiver of the landlord's right to terminate the lease for that particular breach."

The Landlord's agents claimed that the term of the tenancy agreement prohibiting pets was a material term however they provided no evidence in support of that assertion and they admitted that they were not employed by the Landlord at the time the tenancy agreement was signed. The Landlord's agent, J.A., denied that the previous resident manager would have allowed the Tenant to visit her on the rental property however she also admitted that she noticed immediately after she took over the resident manager position that the dog was already regularly visiting the Tenant and she took no steps to have it removed for a further 4 to 5 months. Furthermore, the Landlord's agents provided no evidence from the former resident manager to support their assertion that the former resident manager did not give his verbal consent for the dog to visit the rental property.

In summary, I find that the Tenant is in breach of the term of the tenancy agreement not to have pets. However, I also find that the Landlord has provided insufficient evidence to conclude that the pet clause is a material term the breach of which would constitute grounds to end the tenancy. In other words, I find that the Landlord is not entitled to end the tenancy due to the Tenant's breach of the pet clause because the Landlord has not proven that this was a material term of the tenancy agreement. Consequently, the One Month Notice to End Tenancy for Cause dated July 24, 2012 is cancelled and the tenancy will continue.

As the Tenant has been successful in this matter, she is entitled pursuant to s. 72(1) of the Act to recover from the Landlord the \$50.00 filing fee she paid for this proceeding and I Order pursuant to s. 72(2) of the Act that she may deduct this amount from her next rent payment when it is due and payable.

### Conclusion

The Landlord's application is dismissed without leave to reapply. The Tenant's application is granted. 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: August 17, 2012.

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Residential Tenancy Branch