



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes: CNC OLC

### Introduction

The tenant applied under the *Residential Tenancy Act* (the “*Act*”) to cancel a 1 Month Notice to End Tenancy for Cause (the “*Notice*”), and to seek an order requiring the landlord to comply with the *Act*, regulation or tenancy agreement.

The tenant and an agent for the landlord (the “agent”) attended the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained, evidence was reviewed and the parties were provided with an opportunity to ask questions about the hearing process. They were provided with the opportunity to submit documentary evidence prior to this hearing, all of which has been reviewed, to present affirmed oral testimony evidence and to make submissions to me. I have considered all of the evidence that was submitted in accordance with the rules of procedure, and testimony provided.

### Preliminary Matter

The tenant referred to a letter from a medical professional that she submitted to the landlord and via fax to the Residential Tenancy Branch after her original evidence package had been submitted. As the letter was not served in accordance with the rules of procedure, it was excluded. As an alternative, the tenant was provided the opportunity to read the letter into evidence orally during the hearing.

### Issues to be Decided

- Should the 1 Month Notice to End Tenancy for Cause be cancelled?
- Should the landlord be ordered to comply with the *Act*, regulation or tenancy agreement?

### Background and Evidence

According to the written tenancy agreement, a month to month tenancy began on July 1, 2012. Monthly rent in the amount of \$500.00 is due on the first day of every month. The tenant paid a security deposit of \$250.00 at the start of the tenancy.

The written tenancy agreement was signed by the parties on July 16, 2012. The tenancy agreement refers to a 2 page Addendum to the Tenancy Agreement with 15 conditions. The parties agree to signing the Addendum, however, the tenant disputes that all 15 conditions were on the Addendum when she signed it on July 16, 2012.

The tenant alleges that condition 12 and 15 were not on the Addendum when she signed it. Condition 12 of the Addendum states:

“12. Animals are not allowed on the premises.”

[reproduced as written]

The agent testified that the Addendum was not altered in any way and that the tenant was aware of the animal restriction before entering into the tenancy agreement.

The tenant stated that her dog is very important to her as her dog is a therapeutic dog which assists her in dealing with her medical issues. The tenant read into evidence a letter from a medical professional stating that the tenant suffers from medical issues, and recommends that she be permitted to keep her dog as the dog assists her with her medical issues.

The tenant was asked whether she advised the landlord of her dog before moving into the rental unit. The tenant denied advising the landlord of her dog prior to the start of the tenancy. The tenant was asked why she did not advise the landlord of her dog prior to moving in. The tenant stated that she was focused on the no smoking rule and did not think to mention her dog to the landlord. The tenant stated that she did not think that having a dog would be a problem.

The tenant states that she did not receive a copy of the tenancy agreement until August 20, 2012, when she requested a copy from the landlord. The tenant stated that the Addendum to the tenancy agreement was not provided by the landlord until September 24, 2012. The agent was unable to recall when the tenancy agreement and Addendum was provided to the tenant.

The tenant confirmed receiving a warning letter from the landlord dated July 31, 2012. In that letter, the landlord writes that the tenant signed an agreement accepting that

there were no pets allowed in the building and that she did not mention having a dog when they signed the agreement. The landlord also writes that by August 10, 2012 the tenant must choose between staying in her rental unit without her dog or face eviction. The tenant confirmed during the hearing that she did not respond to the landlord's letter as she was stressed. The tenant also confirmed that she still has her dog and refuses to part with her dog as she has no family or friends. The tenant stated that people in this building want animals and "are hoping that I win as they would like dogs too."

The agent stated that the landlord is not interested in making an exception for tenant to keep her dog through a "grandfather clause", as other tenants would then make the same request, and they have had a no pet policy for many years, which will remain.

The agent provided a copy of the tenancy agreement Addendum as evidence for another tenant in the building, who had recommended that the tenant apply for a rental unit. The agent stated that the no animal rule was written in that Addendum also.

The agent made a verbal request for an order of possession during the hearing.

### Analysis

Based on the documentary evidence and the oral testimony provided during the hearing, and on the balance of probabilities, I find the following.

**1 Month Notice to End Tenancy for Cause** – The tenant alleges that the tenancy agreement and Addendum that she signed at the start of the tenancy did not mention a restriction on animals in the building. The tenant alleges that the landlord falsified the Addendum by adding conditions 12 and 15 to the Addendum. Condition 12 relates to the no animal rule and condition 15 relates to the no smoking rule.

I do not accept the testimony of the tenant for two reasons. The first reason is that the tenant, by her own admission, contradicted herself during the hearing. The tenant first stated that she was unaware of condition 12 (no animal rule) and condition 15 (no smoking rule) then later stated that she didn't advise the landlord of her dog as she was focused on the no smoking rule. Secondly, on the balance of probabilities, I find it illogical that the tenant would be aware of Addendum conditions 1 through 10, and conditions 13 and 14, yet claim that 12 and 15 were not originally on the Addendum. It makes no logical sense that 2 conditions of the Addendum which were referenced on the tenancy agreement as having 15 conditions, would be missing from the Addendum. Furthermore, even if I were to accept the testimony of the tenant, I would at the very

least, expect the tenant to ask where conditions 12 and 15 were if they were missing when she signed the documents, which was not done.

Given the above, I prefer the testimony of the agent who confirmed that the Addendum had not been altered in any way and provided evidence from another tenant in the building who referred the tenant to the landlord, that his Addendum also contained the no animal rule.

**I find** that the tenant was aware of the animal restriction in the building before moving into the rental unit. Therefore, **I find** the tenant has breached a material term of the tenancy agreement and **I dismiss** the tenant's application to cancel the Notice.

Section 55 of the *Act* states:

#### **Order of possession for the landlord**

- 55** (1) If a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, the director must grant an order of possession of the rental unit to the landlord if, at the time scheduled for the hearing,
- (a) **the landlord makes an oral request for an order of possession, and**
  - (b) **the director dismisses the tenant's application or upholds the landlord's notice.**

[emphasis added]

Given the above and taking into account the agent's oral request for an order of possession during the hearing, **I find** that the landlord is entitled to an order of possession effective **two days** after service on the tenant. This order may be filed in the Supreme Court and enforced as an order of that court.

**I caution** the landlord to provide a tenant a copy of the tenancy agreement including all addendums within 21 days of entering into a tenancy agreement in accordance with section 13(3) of the *Act*.

#### Conclusion

I dismiss the tenant's application to cancel the 1 Month Notice to End Tenancy for Cause.

I grant the landlord an order of possession effective **two days** after service upon the tenant. This order must be served on the tenants and may be enforced in the Supreme Court of British Columbia.

I caution the landlord to abide by section 13(3) of the *Act*.

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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: October 02, 2012

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Residential Tenancy Branch