



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNC, OPR, FF

### Introduction

This hearing was convened in response to applications by the tenant and the landlord.

The tenant's application is seeking orders as follows:

1. To cancel a notice to end tenancy for cause issued on September 25, 2012; and
2. To recover the cost of filing the application from the landlord.

The landlord's application is seeking orders as follows:

1. For an order of possession; and
2. To recover the cost of filing the application from the tenant.

Both parties appeared, gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions to me.

In a case where a tenant has applied to cancel a notice for cause Residential Tenancy Branch Rules of Procedure require the landlord to provide their evidence submission first, as the landlord has the burden of proving cause sufficient to terminate the tenancy for the reasons given on the notice.

I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure. I refer only to the relevant facts and issues in this decision.

### Issue(s) to be Decided

Should the notice to end tenancy issued on September 25, 2012, be cancelled?  
Is the landlord entitled to an order of possession?

### Background and Evidence

The tenancy began on June 1, 2007. Current rent in the amount of \$940.00 was payable on the first of each month. A security deposit of \$425.00 was paid by the tenant.

The parties agree that a one month notice to end tenancy for cause was served on the tenant indicating that the tenant is required to vacate the rental unit on October 31, 2012.

The reason stated in the notice to end tenancy was that the tenant has:

- Breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so

Counsel submits that the tenant has breached a material term of the tenancy agreement by having a cat in the rental unit. Filed in evidence is a copy of the tenancy agreement signed by the tenant and landlord.

Term #18 of that agreement states, unless specifically permitted in writing in advance by the landlord, the tenant must not keep or allow on the residential property any animal, including a dog, cat, reptile or exotic animal, domestic or wild, fur bearing or otherwise.

The landlord's agent (PR) testified during an annual fire inspection in November 2010, no pet was detected in the tenant's rental unit. However, at the fire inspection in December 2011, he saw a cat in the tenants unit, which is contrary to the signed tenancy agreement.

Counsel submits the tenant did not have verbal or written permission from any previous landlord to be allowed to keep a pet. Filed in evidence are sworn affidavits of (HD) and (MP).

The affidavit of (HD) states that she was the resident manager for this apartment in November 2007, and as the apartment had already adopted a no pet policy at that time, she did not give this tenant or any other tenant permission to keep a cat or any other pet.

The affidavit of (MP) states the tenant was already occupying the unit when she became property manager and did not give the tenant, nor any other tenant, permission to have a cat.

Counsel submits the tenant was notified on January 12, 2012, by letter that having a cat in the rental unit was a breach of a material term of the tenancy agreement. Counsel submits the tenant then filed an Application for Dispute Resolution claiming harassment and loss of quiet enjoyment and as a result of that application the landlord did not take any further action until a decision was made. The decision made on June 12, 2012, dismissed the tenant's claim.

Counsel submits that on July 6, 2012, he sent to the tenant a letter and in that letter it informed the tenant that she remains in breach of a material term of the tenancy agreement by keeping a cat, without written authorization from the landlord. The letter informed the tenant that the cat must be removed by August 6, 2012. Filed in evidence is a copy of the letter.

Counsel submits on September 11, 2012, the landlord gave the tenant a further opportunity to comply with the term of the tenancy agreement. The letter informed the tenant that she was required to confirm the cat was removed from the unit by September 21, 2012.

The tenant testified when she entered into the tenancy agreement with the previous landlord (HD), she informed the landlord that she had a cat. The tenant stated the landlord hushed her and quietly told her to keep the cat. The tenant stated her friend (SR) was present. Filed in evidence is the affidavit of (SR).

The affidavit of (SR) states I was with the tenant August 20, 2007 when she viewed the apartment. On the viewing day, my friend told the manager that she has a cat. I was there when she told me that she was allowed to keep her cat on the viewing day.

### Analysis

Based on the above, the testimony and evidence, an on a balance of probabilities, I find as follows:

After considering all of the written and oral submissions submitted at this hearing, I find that the landlord has provided sufficient evidence to show that the tenant has:

- Breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so

In this case the tenant evidence was the previous landlord (HD) gave her permission to keep the cat. The affidavit of (HD) indicated the building was a no pet building at that time and she did not give this tenant or any other tenant permission to retain a pet. The affidavit of (SR) states he was there on August 20, 2007, however, that date is after the tenancy commenced on June 1, 2007.

I find that it is illogical that the landlord would give the tenant permission to retain a pet, and then both the tenant and landlord would signed a tenancy agreement which included a material term of no pets allowed. Also, if a pet is undetected for a period of time, it does not give the tenant any special rights. I find the tenant has breached a material term of the tenancy agreement by keeping a cat.

The evidence was in December 2011, the pet was first detected by the landlord and the tenant was provided notice in a letter dated January 12, 2012, that she was in breach of the tenancy agreement. The evidence was the landlords did not take further action due to the tenant's outstanding claim for harassment and loss of quiet enjoyment.

The evidence was after the tenant's claim was heard and dismissed, counsel sent the tenant a letter on July 6, 2012, indicated that the tenant was still in breach of the tenancy agreement and the pet was required to be removed by August 6, 2012. The tenant was unwilling to have the pet removed.

The evidence was a further and final letter was sent to the tenant on September 11, 2012, that the pet must be removed by September 21, 2012. The tenant was still unwilling to have the pet removed. The tenant was then served with the notice to end tenancy for cause.

I find the tenant was provided with sufficient warnings by the landlord to correct this material breach of the tenancy agreement. The tenant made the choice not to comply with those warnings. As a result, the notice issued on September 25, 2012, is a valid notice to end tenancy. Therefore, the tenancy will end in accordance with the Act.

The landlord has agreed to extend the effective date of the notice and the tenant must move out of the rental unit by November 30, 2012. This consent is given only to give the tenant an opportunity to find new rental accommodation. The tenant is required to ensure rent is paid on the first of November 2012.

Therefore, I dismiss the tenant's application to cancel the one month notice to end tenancy issued on September 25, 2012. The tenancy will end on November 30, 2012, in accordance with the Act. The tenant is not entitled to recover the cost of filing the application from the landlord.

As I have dismissed the tenant's application, I find that the landlord is entitled to an order of possession effective **November 30, 2012, at 1:00 P.M.** This order must be served on the tenant and may be filed in the Supreme Court.

As the landlord has been successful with their application and the landlord is entitled to recover the cost of filing the application from the tenant. I authorize the landlord to retain the amount of \$50.00 from the tenant's security deposit in full satisfaction of this claim.

### Conclusion

The tenant's application to cancel a one month notice to end tenancy for cause issued on September 25, 2012, is dismissed.

The landlord is granted an order of possession. The landlord is authorized to retain \$50.00 from the tenant's security deposit for the cost of filing their application.

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: October 30, 2012.

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Residential Tenancy Branch