



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNC CNR MNDC OPR OPC MND MNR MNSD FF

### Introduction

This hearing dealt with applications by the tenant and the landlord.

The tenant originally applied to cancel a notice to end tenancy for cause, as well as for monetary compensation. On March 7, 2013, the tenant filed an amendment to her application to also cancel a notice to end tenancy for unpaid rent. The landlord stated that she did not receive the tenant's amended application, but she was not opposed to an amendment of the tenant's application to include the application to cancel the notice to end tenancy for unpaid rent. I therefore amended the tenant's application to include the application to cancel the notice to end tenancy for unpaid rent.

The landlord applied for an order of possession pursuant to the notice to end tenancy for cause as well as for the notice to end tenancy for unpaid rent; the landlord also applied for monetary compensation and an order to retain the security deposit in partial compensation of the monetary claim.

Neither party raised any other issues regarding service of the applications or the evidence. At the outset of the hearing, I determined that the issue of the notices to end tenancy took precedence, and only heard evidence on those notices. The monetary portions of both applications are dismissed with leave to reapply.

I have reviewed all testimony and other evidence related to the two notices to end tenancy. However, only the evidence relevant to the issues and findings in this matter are described in this decision.

### Issue(s) to be Decided

Is the notice to end tenancy for unpaid rent valid?

Is the notice to end tenancy for cause valid?

### Background and Evidence

The current tenancy began on November 1, 2011. Before that date, the tenant had occupied the rental unit under a previous tenancy agreement.

The tenancy agreement indicates that monthly rent is \$1395, unless the tenant pays rent before the first of each month, in which case the monthly rent is reduced to \$1295. The tenant is also responsible for 50 percent of the utilities and 33 percent of cable and internet. The rental amount and the cost of utilities are based on a maximum of 4 people living in the suite. If more than 4 people reside in the suite, the tenant must pay 15 percent more in utilities and an additional \$100 in rent for each additional person. Clause 19 in the tenancy agreement states that dogs are not permitted, and other pets may be allowed only if there is a written agreement from the landlord and the tenant has paid a pet deposit.

### *Notice to End Tenancy for Unpaid Rent*

On March 3, 2013, the landlord served the tenant with a notice to end tenancy for unpaid rent or utilities. The notice indicates that the tenant failed to pay rent in the amount of \$3962 that was due on March 1, 2013; and that the tenant failed to pay \$352.50 in utilities following a written demand to pay the utilities on March 1, 2013. In the hearing, the landlord stated that she was not pursuing the unpaid utilities at this time because she learned that she was required to give a written demand for the utilities 30 days before issuing the notice for unpaid utilities.

The landlord stated that the tenant's eldest daughter had moved into the rental unit in June 2012, and therefore the monthly rent increased by \$100 beginning June 2012. Further, the tenant had failed to pay any of the rent for March 2013 at the time the notice was served. The landlord acknowledged receiving \$1482 from the tenant on March 7 or 8, 2013.

The tenant stated that she has paid \$1482 for all of her rent and utilities since the outset of the tenancy. The tenant disputes the requirement for her to pay additional rent and utilities based on the fact that her eldest child now lives in the rental unit. The tenant's husband is rarely home as he works out of town, and the tenant's two youngest children, aged seven and four, only reside in the rental unit 50 percent of the time. The tenant further stated that the landlord was well aware that the tenant's eldest daughter was coming back to live permanently with the tenant, and the landlord did not demand additional rent and utilities until November 2012.

*Notice to End Tenancy for Cause*

On February 22, 2013, the landlord served the tenant with a notice to end tenancy for cause. The notice indicated that the reason for ending the tenancy was that the tenant had breached a material term of the tenancy agreement and failed to correct the breach within a reasonable time after written notice to do so.

The landlord stated that the tenant had breach the section of the tenancy agreement that forbids dogs. The landlord stated that when the tenant's eldest daughter came to visit in the summer of 2011, she brought a dog with her, but she took the dog with her when she left. When the tenant's oldest daughter returned to the rental unit in June 2012, she brought her dog back with her. The tenant then acquired a second dog. The landlord stated that the dogs have bitten the mail delivery person. The landlord stated that on November 21, 2012, she served the tenant with written notice that the dogs must be removed. The tenant did not remove the dogs. The landlord also stated in the hearing that the tenant had breached the tenancy agreement by failing to obtain written permission to have the dogs.

The tenant's response was that the landlord was aware of the tenant's daughter's dog, and the tenant's daughter asked and was given verbal permission to have a second dog. The tenant's evidence was that she did not receive the written warning to remove the dogs until March 11, 2013.

Analysis

*Notice to End Tenancy for Unpaid Rent*

I find that the notice to end tenancy for unpaid rent is not valid. According to the landlord's evidence, the tenant owed an additional \$100 per month in rent for the months of June 2012 through February 2013, and the tenant owed \$1495 for March 2013 rent. Therefore, the monetary amount set out on the notice to end tenancy ought to have been \$2395. The amount claimed for unpaid rent must be for rent only, and the amount claimed must be accurate, or the notice will not be valid.

*Notice to End Tenancy for Cause*

I find that the notice to end tenancy for cause is not valid. The landlord stated that she was aware that the tenant's daughter had a dog in the rental unit in the summer of 2011, and that she returned with the dog in June 2012. I find, based on the evidence,

that the term of the tenancy agreement forbidding dogs is not material. 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. The landlord was clearly aware of the presence of the first dog in the summer of 2011 as well as beginning in June 2012, but the landlord did not seek to enforce the term in the tenancy agreement forbidding dogs until at least November 2012. Additionally, in the hearing the landlord stated not that the tenancy agreement forbade dogs, but that the tenant ought to have sought written permission from the landlord to keep the dog or dogs.

### *Filing Fees*

As the tenant's application to cancel the notices to end tenancy was successful, she is entitled to recovery of the \$50 filing fee for the cost of her application.

As the landlord's application for an order of possession pursuant to either notice was unsuccessful, she is not entitled to recovery of the filing fee for the cost of her application.

### Conclusion

The notices to end tenancy are both cancelled, with the effect that the tenancy continues.

The tenant may deduct \$50 from her next month's rent.

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: March 22, 2013

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Residential Tenancy Branch

