



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding BAYSIDE PROPERTY SERVICES  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      CNC, MNDC, OLC, FF

### Introduction

This hearing was convened in response to an application filed by the tenant seeking:

1. To cancel a Notice to End Tenancy given for cause;
2. An Order for compensation for damage and/or loss;
3. An Order that the landlord comply with the Act; and
4. Recovery of the filing fee paid for this application.

### Issue(s) to be Decided

Does the landlord have cause to end this tenancy? Should the landlord be ordered to comply with the Act? Has the tenant proven she is entitled to compensation for damage and/or loss and should she be awarded recovery of the filing fee?

### Background and Evidence

This tenancy began on April 1, 2012 as a month-to-month tenancy and rent was fixed at \$425.00 per month and rent. These landlords took over management of this building in late 2012. The Tenancy Agreement submitted in evidence states that the tenant paid no security deposit.

Clause 18 of the Tenancy Agreement submitted in evidence states as follows:

PETS. Having regard to the enjoyment, quiet possession and health requirements of other occupants in the residential property, as well as the nature of the property; the Tenancy shall not keep, or allow to be kept, any animals or pets, domestic or wild, fur bearing or otherwise, unless specifically permitted in writing by the Landlord, which permission may be revoked by the Landlord at any time, particularly having regards to the factors set out above, which factors are not all inclusive. Where the Landlord has given his permission in writing, the

Tenancy shall ensure that het pets and animals do not disturb the other occupants in the residential property or adjoining property, and further the Tenant shall ensure that no damages.

*(reproduced as written)*

On February 21, 2013 the landlords hand delivered a "breach letter" to the tenant indicating that the tenant was keeping a dog and going on to say:

I consider the keeping of this animal to be a breach of a MATERIAL TERM of the tenancy agreement and ask that you rectify the situation by removing the animal no later than February 27, 2013.

The letter indicates that failure to do so will result will result in the issuance of a 1 month Notice to End Tenancy for cause. The landlord testified that the tenant did not abide by the directive. A Notice to End Tenancy for cause (breach of a material term) was therefore served on February 28, 2012 by posting the Notice to the rental unit door. Based on that Notice the landlord now seeks an Order of Possession effective April 30, 2013.

The tenant agrees she was served with Notice to End Tenancy and she therefore filed an application seeking to dispute that Notice on March 5, 2013. On that same date the tenant says she also went to the rental office to deliver a copy of a letter to the manager, KT, which she says gives her permission to have a pet. The subject letter is dated March 15, 2012. It is written by then property manager LB and states:

Please accept this letter as permission that you and your pet may reside at [the rental unit address] from April 1, 2012 on, as per on our signed Tenancy Agreement.

As Resident Manager there will be no Security deposit or Pet Deposit required.

*(reproduced as written)*

The tenant says that when she delivered this letter to KT she asked if the matter was now resolved and KT's immediate response was to accuse her of having written the letter herself. The tenant says that KT advised her that the matter was not resolved and that the landlord would be making an application for an Order of Possession which was done on March 19, 2013.

The tenant says that the landlords have known "...since Day 1..." that she had a pet. The tenant submits that the dog has resided with her since March 10, 2012. The landlord says that it was not until KT became manager on December 29, 2012 that the matter of a pet became an issue. The tenant submitted letters from other tenants who have known her dog has been in residence since the start of this tenancy and say they have had no problem with the dog.

The landlord responded that a copy of the "permission letter" apparently authored by LB the former property manager is not contained in their files. The landlord testified that the rental building was sold and that the new owners obtained the files and the only item in this "suite file" is the Tenancy Agreement. The landlord says that at the time this letter was purportedly issued the tenant was the Resident Manager.

The landlord questioned why the tenant did not initially give them a copy of the "permission letter" in response to the breach letter given to the tenant on February 28, 2012. The landlord wondered why the tenant waited until March 5 to deliver the "permission letter" to them and why she did not produce it when served with the "breach letter" on February 21.

The landlord emailed LB who no longer works for the owners but is the purported author of the "permission letter" asking:

The question now is why there was no copy of this letter supplied to Bayside and/or the new Owner in the due diligence material, the Caretaker Contract documents, or even the tenancy suite file for Unit 231?"

*(reproduced as written)*

LB's response states in part:

Sorry I cannot recall exactly what happened around that time, but I also have a copy of the letter on file in my office.

The tenant submits that while LB is no longer a property manager for this particular building she remains a property manager for the previous owners of this building and she retains copies of the file. The tenant submitted further that she did not feel compelled to give the landlord a copy of the "permission letter" earlier because it was her own personal copy. The tenant submits that she did not feel in breach of her Tenancy Agreement and felt no need to prove she was allowed to keep a pet. The tenant says that it was not until she was served with a 1 month Notice to End Tenancy

for Cause that she became concerned that the landlord truly intended to try to end her tenancy because of the dog. The tenant noted that even when she did provide the permission letter it was clear that the landlord did not wish to resolve the matter and continue the tenancy. The tenant submits that the landlord is trying to evict her as a result of her requests for repairs and as a result of the Employment Standards complaint she has filed against the landlord with respect to her previous employment with them.

With respect to her claim for \$425.00 the tenant says this is for harassment and threats she has endured since February 6 at which time the owner of the building saw her outside with her dog. The tenant says the landlord told her "...you are going to get hurt". The landlord says she did call the police and has a file number but as far as she knows no charges have been laid. The tenant says she told two people about the event after it happened "just in case" however she agreed that there were no actual eye-witnesses to the events.

The landlord agreed that they did not wish to continue with this tenancy due to reasons other than the issue of the pet. The landlord says that the tenant's complaints of harassment are overblown and relate to their accounting department simply trying to get in touch with her over WorkSafe and Employment Standards issues which have arisen as a result of the tenant's former role as Resident Manager.

### Analysis

The landlord bears the burden of proving that this tenancy should end. The landlord submits a Tenancy Agreement containing a clause that the tenant is not able to have a pet without permission. The landlord also submits that evidence that she is not allowed to have a pet includes that the tenant has not paid a pet deposit.

The tenant has disputed the Notice and testified that she has always had a pet and that management has always known about the pet. Further she has produced a "permission letter" from the former property manager, LB, granting her permission to keep a pet and waiving the pet deposit because the tenant was acting as resident manager. Likewise, the Tenancy Agreement sets out that the tenant did not pay a security deposit either.

The landlord disputes the authenticity of the letter stating that there is no copy of it in their own files all of which files were to have been turned over them when they took over management of this property.

In support of their submission that the letter is not authentic, the landlord produced an email communication between themselves and LB:

Landlord: The question now is why there was no copy of this letter supplied to Bayside and/or the new Owner in the due diligence material, the Caretaker Contract documents, or even the tenancy suite file for Unit 231?

LB: Sorry I cannot recall exactly what happened around that time, but I also have a copy of the letter on file in my office.

The landlord points out that LB goes on to state that while she cannot recall everything that went on around that time she had since discussed the matter with the tenant who reminded her of the events. The landlord says that this shows that LB is only repeated the tenant's version of events.

What strikes me about this email discussion is that LB does not deny having written the permission letter. In fact her email states "...I also have a copy of the letter on file in my office".

With respect to the landlord's comments about LB being unable to recall all events from that time, it is equally possible that this comment is in response to the landlord's query regarding why this letter was not in their office files. Clearly LB did not deny writing the letter which would have been easy for her to do. However we may never know LB's true intent. There was no affidavit evidence from LB filed at this hearing nor did she attend to give evidence under oath either of which would have gone some way to determining whether the permission letter was a forgery or not. While it is equally so that the tenant did not produce LB, the burden of proving cause to end this tenancy remains with the landlord. I find that the landlord has failed to supply sufficient evidence to show that the letter is a forgery, that the tenant does not have permission to have a dog and is therefore in breach of a material term of the tenancy such that this tenancy should end.

The tenant's application seeking to cancel the Notice is therefore allowed. The effect of this decision is that this tenancy shall continue as though that Notice dated February 28, 2012 had not been served.

With respect to the tenant's claim for compensation for harassment I find that the tenant has failed to bring sufficient evidence that the landlord has harassed her or that she should be entitled to compensation therefor. I also find that the tenant has failed to

bring sufficient evidence to show that the landlord has failed to comply with the Act, this claim is also therefore dismissed.

As the tenant has been mostly successful in this application I will allow her to recover the filing fee she has paid for this application. The tenant is at liberty to deduct \$50.00 from her next rental payment to realize recovery of this sum.

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: April 02, 2013

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Residential Tenancy Branch