



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### Dispute Codes

Landlord:	OPC and FF
Tenants	CNC FF

### Introduction

This hearing was convened on applications by both the landlord and the tenant.

By application of July 8, 2013, 2012, the landlord seeks an Order of Possession pursuant to a Notice to End Tenancy for cause served by posting on the tenant's door on June 25, 2013 and setting an end of tenancy date of July 31, 2013.

By prior application of June 28, 2013, the tenant sought to have the Notice to End Tenancy set aside.

Both parties sought to recover their filing fee from the other.

### Issue(s) to be Decided

Should the Notice to End Tenancy be set aside or upheld with an Order of Possession?

### Background, Evidence and Analysis

This tenancy, in an apartment in a strata-titled building began on March 15, 2013. Rent is \$675 per month and the landlord holds a security deposit of \$337.50 paid at the beginning of the tenancy.

During the hearing, the landlord gave evidence that she had been compelled to serve the Notice to End Tenancy after having been served with notice of a bylaw infraction from the strata council. The council initially stated it would impose a \$200 weekly fine on the landlord if the tenant's oversized dog remained in the rental unit. The strata council had initially set a deadline of June 1, 2013, but subsequently extended it to August 1, 2013.

The landlord noted that the fine is substantially greater than the monthly rent which itself only covers her cost of the unit which she is attempting to secure as her retirement home. She stated that the imposition of a fine could cause her to lose the property.

The landlord stated that the dog in question is well behaved and its conduct has caused no problems. She further stated her satisfaction with the tenant and her willingness to continue the tenancy if he relocates the dog to meet the strata council's requirements.

The bylaw in question permits dogs up to a maximum of 14 inches in height while the tenant's dog is a Labradoodle (a Poodle/Labrador Retriever cross), a medium sized breed.

The parties gave evidence that the unit had initially been rented by the tenant's mother and sister as he was working in another city at the time and was preparing to relocate. They had shown the landlord a picture of the tenant and the dog at the time of viewing the rental unit.

The landlord stated that she had been concerned at the time that the dog might be larger than allowed under the bylaw, but the tenant had given her assurance that if it turned out to be a problem, he would have the dog stay with family members.

However, when the matter became an issue and he was provided with minutes of strata council meetings and directives to the landlord he was unable to relocate the dog. On the landlord's request, the tenant advised her that the dog had been moved from the rental unit on June 3, 2013. Subsequently, after the landlord had requested written assurance to pass to the strata council, she was told that the dog had remained or returned and would be staying for the duration until October 31, 2013. Therefore, the landlord served the Notice to End Tenancy of June 25, 2013 with an accompanying letter of explanation.

The landlord had cited putting the property at significant risk and breach of a material term of the rental agreement. She had intended the significant risk portion to mean the risk of losing the property that a fine would impose on her, an atypical interpretation of that section of the *Act*. However, that issue can still be considered as breach of a material term of the rental agreement.

In addition, the landlord stated that the tenant has breached a material term of the rental agreement by failing to obtain tenant's insurance with a rider for pet damage.

### Analysis

I would note that I have found both the tenant and the landlord admirably honest in their testimony.

The landlord was candid in stating that she had some concern about the size of the dog at the beginning of the tenancy but she wanted to give the tenant an opportunity.

The tenant was equally honest in acknowledging that he had assured the landlord that, if the pet became an issue, he would have it stay with family members.

When the landlord learned that the strata council had been presented with a concern from another resident about the dog, the landlord came forward to advise that it was resident in her rental unit.

While oral agreements normally do not play a role in rental contracts, given that the parties have agreed on some matters, in particular the tenant's promise that he could find temporary accommodation for his pet if need be, I must consider that to be material to the agreement.

In addition, the tenant's agent relies on the requirement that tenant's must be provided with a copy of the strata bylaws at signing of the Form K (a notice to tenants of their obligation to comply with the bylaws) and states that the tenant was not provided with the bylaws at that time.

However, on the grounds of the tenant's own evidence, I find that he was aware at least of the bylaw limiting dog size and had promised to comply if the matter became an issue.

Therefore, I find that the Notice to End Tenancy is lawful and valid and I cannot set it aside.

Given that the pet is well behaved and in order to provide the tenant reasonable time to find new accommodation, I set the end of tenancy date at August 31, 2013.

In so doing, I would note that the tenant and his agent have been actively looking for new accommodation for him and the dog in an effort to settle this matter cooperatively. The tenant expects to have a property he has purchased ready for habitation by the end of October 2013.

I note also that the tenant and his agent have pledged to do whatever they reasonably can to assist the landlord in finding new tenants.

### Conclusion

The Notice to End Tenancy of June 25, 2013 is upheld and parties remain responsible for their own filing fees..

The landlord's copy of this decision is accompanied by an Order of Possession, enforceable through the Supreme Court of British Columbia, to take effect on August 31, 2013.

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 01, 2013

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Residential Tenancy Branch

