



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### Dispute Codes:

CNC, O

### Introduction

This hearing was convened in response to the Tenant's Application for Dispute Resolution, in which the Tenant applied to set aside a Notice to End Tenancy for Cause and for "other".

Both parties were represented at the hearing. They were provided with the opportunity to submit documentary evidence prior to this hearing, to present relevant oral evidence, to ask relevant questions, and to make submissions to me.

The Landlord submitted documents to the Residential Tenancy Branch. The Property Manager stated that copies of these documents were posted on the Tenant's door on September 03, 2013. The Tenant believes she received these documents on her door on September 02, 2013. I find that the Tenant received these documents on either September 02, 2013 or September 03, 2013, which is within the timelines for serving evidence to an individual. The documents were therefore accepted as evidence.

The Tenant submitted documents to the Residential Tenancy Branch, copies of which were served to the Landlord, by mail, approximately one month ago. The Landlord acknowledged receipt of the Tenant's evidence and it was accepted as evidence for these proceedings.

### Issue(s) to be Decided

Should the Notice to End Tenancy for Cause, served pursuant to section 40 of the *Manufactured Home Park Tenancy Act (Act)*, be set aside?

### Background and Evidence

The Property Manager stated that on July 26, 2013 she posted a One Month Notice to End Tenancy for Cause on the door of the rental unit. The Tenant does not recall when or how the Notice was served, although she does not dispute the Property Manager's testimony.

The reason for ending the tenancy cited on the Notice to End Tenancy is that the Tenant has breached a material term of the tenancy that was not corrected within a reasonable time.

The Property Manager and the Tenant agree that there is a term in their tenancy agreement that permits the Tenant to keep two indoor cats on the site.

The Property Manager contends that the Tenant has breached this term of the tenancy agreement on several occasions by allowing her cats to roam in the manufactured home park. The Tenant stated that she has never permitted either of her cats to be outside, although she acknowledges that they have been let out, accidentally, on two or three occasions.

The Property Manager stated that she knows the Tenant's cats by sight; that within the first two months of the tenancy she saw the cats outside; and that she left a telephone message for the Tenant advising her to keep her cats inside. The Tenant stated that she did receive this message and that her cats were not outside on that day.

The Property Manager stated that a few weeks after she left the first message she again saw the cats outside and that she left a telephone message for the Tenant advising her to keep her cats inside. The Tenant stated that she did receive this message, at which time she realized one of her cats was outside.

The Property Manager and the Tenant agree that on July 23, 2013 that Tenant was given a written warning reminding her that her cats must not be permitted outside and that she will have to relocate her cats if she does not comply with this term of the tenancy agreement.

The Property Manager stated that when the aforementioned letter was delivered on July 23, 2013 the Tenant told her that she would not keep her cats inside. The Tenant denies making this statement.

The Property Manager stated that on July 24, 2013 she again observed the Tenant's cats outside. The Tenant stated that her cats have not been outside since she received the letter on July 23, 2013.

### Analysis

Section 40(1)(g) of the *Act* authorizes a landlord to end a tenancy if a tenant has failed to comply with a material term of the tenancy and the tenant does not correct the situation within a reasonable time after the landlord gives the tenant written notice to do so. The Landlord bears the burden of proving there are grounds to end a tenancy.

I find that the Landlord has submitted insufficient evidence to establish that the Tenant's cat(s) has been outside since July 23, 2013, which is when the Tenant was served with written notice of her obligation to keep the cat(s) inside. In reaching this conclusion, I

was heavily influenced by the absence of evidence that corroborates the Property Manager's testimony that she saw the cats outside on July 24, 2013 or that refutes the Tenant's testimony that they have not been outside since July 23, 2013. In determining this matter I am cognizant of the possibility that the Property Manager may be misidentifying the Tenant's cat(s).

The Tenant should be clearly aware that the Landlord may have the right to end this tenancy if the Landlord is able to establish that the cats are permitted outside in the future.

### Conclusion

As I have determined that the Landlord has not established that there are grounds to end this tenancy pursuant to section 40(1)(g) of the *Act*, I set aside the One Month Notice to End Tenancy, and I order that this tenancy continue until it is ended in accordance with the *Act*.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Act*.

Dated: September 09, 2013

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Residential Tenancy Branch

