



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## Decision

### Dispute Codes:

CNC

### Introduction

This hearing dealt with an Application for Dispute Resolution by the tenant to cancel a Notice to End Tenancy for Cause dated September 27, 2013 and effective October 31, 2013.

Both parties were present at the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained. The participants had an opportunity to submit documentary evidence prior to this hearing, and the evidence has been reviewed. The parties were also permitted to present affirmed oral testimony and to make submissions during the hearing. I have considered all of the affirmed testimony and relevant evidence that was properly served.

### Issue(s) to be Decided

Should the One-Month Notice to End Tenancy for Cause be cancelled?

### Background and Evidence

Submitted into evidence by the applicant/tenant in support the application was a copy of the One-Month Notice to End Tenancy, copies of correspondence between the parties and a copy of the tenancy agreement.

The landlord testified that the tenancy began July 1, 2013 with rent of \$1,300.00 and a security deposit of \$650.00 was paid.

The landlord testified that, the One Month Notice to End Tenancy for Cause was issued on the basis that the tenant has significantly interfered with or unreasonably disturbed others and that the tenant has committed a breach of a material term by the tenant.

The landlord testified that the tenant's dog unreasonably disturbed others. The landlord testified that the tenants are not allowed to have a dog under the terms of the tenancy agreement.

The tenant testified that there is no term in the tenancy agreement stating that a dog is not allowed. The tenant also denied that their pet had unreasonably disturbed others.

### **Analysis**

The burden of proof is on the landlord/respondent to justify the validity of the Notice.

Section 47(1) of the Act states, a landlord may end a tenancy when a tenant breaches a material term of the tenancy and fails to correct the breach after written notice to do so.

In this instance, I find that the landlord was holding the tenant accountable for not complying with an alleged material term that prohibited dogs. However, the burden of proving the existence of this material term is on the landlord.

In order to establish that a party breached a material term in the tenancy, the claimant must satisfy the Dispute Resolution Officer that the following three components exist:

There must be a clear term contained in the tenancy agreement

This term must fit the definition of being "*material*"

There must be a genuine breach of the material term.

Because the tenancy agreement is silent on the subject of pets, other than to indicate that a pet damage deposit was not applicable at the time the tenants moved in, I find that the landlord was not able to establish that there was a clear term in the tenancy agreement prohibiting dogs.

In this instance, I find that the landlord has not succeeded in sufficiently proving on a balance of probabilities that there was a violation of a material term. I also find that the landlord has not sufficiently proven that the tenant's dog unreasonably disturbed others. However, the tenant is cautioned that prolonged loud barking of a dog, especially after hours, could be considered as an unreasonable disturbance.

The tenants are also required to pay a pet damage deposit in accordance with the tenancy agreement and, under the Act, the tenant's must repair any damage caused to the unit by their pet.

Based on the evidence before me, I find that the stated cause for ending the tenancy that the tenant had breached a material term of the tenancy agreement and failed to correct it after written notification by the landlord has no merit.

Based on the above, I hereby grant the tenant's application and order that the One Month Notice to End Tenancy for Cause dated September 27, 2013, is cancelled and of no force nor effect.

**Conclusion**

The tenant is successful in the application and the One Month Notice to End Tenancy for Cause is cancelled.

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: November 14, 2013

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Residential Tenancy Branch

