



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding Pemberton Holmes Ltd.  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      CNC, RP, ERP, OLC, RR, MNDC, FF

### Introduction

This hearing was convened as the result of and to deal with the tenants' application for dispute resolution under the Residential Tenancy Act (the "Act"). The tenants applied for an order cancelling a 1 Month Notice to End Tenancy for Cause (the "Notice"), an order requiring the landlord to make repairs and emergency repairs to the rental unit, for an order requiring the landlord to comply with the Act, for an order allowing a reduction in rent, for a monetary order for money owed or compensation for damage or loss and for recovery of the filing fee paid for this application.

The listed parties attended, the hearing process was explained and they were given an opportunity to ask questions about the hearing process. At the outset of the hearing, each party confirmed that they had received the other party's evidence. Neither party raised any issues regarding service of the application or the evidence.

Thereafter both parties were provided the opportunity to present their evidence orally and to refer to relevant documentary evidence submitted prior to the hearing, and make submissions to me.

I have reviewed all oral and documentary evidence before me that met the requirements of the Dispute Resolution Rules of Procedure (Rules); however, I refer to only the relevant evidence regarding the facts and issues in this decision.

*Preliminary matter-* I have determined that the portion of the tenants' application dealing with a request for orders for the landlord's compliance with the *Residential Tenancy Act*, repairs and emergency repairs, an order for a reduction in rent and monetary compensation are unrelated to the primary issue of disputing the Notice. As a result, pursuant to section 2.3 of the Rules, I have severed the tenants' Application and dismissed that portion of the tenant's request for those orders, **with leave to reapply**.

The hearing proceeded only upon the tenants' application to cancel a Notice to End Tenancy for Cause.

Issue(s) to be Decided

Have the tenants established an entitlement to have the Notice to End Tenancy for Cause cancelled?

Background and Evidence

According to the written tenancy agreement, the tenancy commenced on June 1, 2014, monthly rent is \$1890, and the tenants paid a security deposit of \$945. The landlord submitted without dispute that the tenants began occupying the rental unit on May 27, 2014.

Pursuant to the Rules, the landlord's agent (hereafter "landlord") proceeded first in the hearing and testified in support of issuing the tenants a 1 Month Notice to End Tenancy for Cause. The Notice was dated June 23, 2014, was served on that date, by posting it on the tenants' door, according to the landlord, and listed an effective end of tenancy on July 31, 2014.

The causes listed on the Notice alleged that the tenants have not paid the pet damage deposit within 30 days as required by the tenancy agreement.

In support of their Notice, the landlord confirmed that the tenancy agreement does not require that the tenants pay a pet damage deposit; however, the landlord submitted that the tenants failed to disclose that they had a dog. The landlord submitted further she noticed that the tenants had a pet after they began moving their personal property into the rental unit, which led to a meeting with the tenants, and a subsequent agreement that they would pay a pet damage deposit. The landlord submitted further that she even agreed to a payment plan for the tenants, and that as they have failed to make any payments on the pet damage deposit, she issued the Notice.

The landlord's relevant documentary evidence included email communication with the tenants and the Notice.

In response, the tenant stated that he went to the landlord's office on May 26, the landlord asked about a dog, and he informed the landlord that they had a dog. The tenant submitted further that the landlord never mentioned a pet damage deposit, there

was no fraud on his part as the pet was disclosed to the landlord, and that the landlord had even seen their dog prior to the start of the tenancy.

The tenant submitted further that during their walk-through inspection, the landlord never mentioned a pet damage deposit, and was not until June 5 before the landlord made mention of a pet damage deposit.

The tenants' relevant documentary evidence included, but was not limited to, the written tenancy agreement, which shows that a pet damage deposit was not required, signed May 26, 2014, a separate pet agreement, which was signed on May 26, 2014, and made an addendum to the tenancy agreement, allowing the tenants to have a pet, which listed the pet by name and breed, the Notice, and written communication between the parties regarding a pet damage deposit.

### Analysis

Based on the foregoing oral and written evidence, and on a balance of probabilities, I find as follows:

Under section 47(1)(a), a landlord may issue to the tenant a notice seeking to end the tenancy if the tenant does not pay the pet damage deposit within 30 days of the date it is required to be paid under the tenancy agreement, which was the alleged cause here.

In the case before me, the written tenancy agreement does not require the tenants to pay a pet damage deposit, and I therefore find the landlord has not supported their Notice. Further, I was not convinced that the landlord was not informed that the tenants had a pet, due to the pet agreement, signed the same day as the written tenancy agreement and which was made a part of the tenancy agreement, specifically referencing the dog by name and breed.

Due to the above, I find that the landlord has submitted insufficient evidence to prove the cause listed on the Notice.

As a result, I find the landlord's 1 Month Notice to End Tenancy for Cause dated June 23, 2014, is not supported by the evidence, and therefore has no force and effect. I order that the Notice be cancelled, with the effect that the tenancy will continue until ended in accordance with the *Act*.

I allow the tenants recovery of their filing fee of \$50, and direct them to deduct this amount from their next or a future month's rent payment in satisfaction of their monetary award. The tenants should inform the landlord when they make this deduction.

### Conclusion

I grant the tenants' application seeking cancellation of the landlord's 1 Month Notice as I have cancelled the Notice.

The tenants are directed to deduct \$50 from a future month's rent payment.

The portion of the tenants' application dealing with a request for orders for the landlord's compliance with the *Residential Tenancy Act*, repairs and emergency repairs, an order for a reduction in rent and monetary compensation is dismissed, with leave to reapply.

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: September 11, 2014

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Residential Tenancy Branch

