



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNC, FF

### Introduction

The tenant applies to cancel a one month Notice to End Tenancy dated November 17, 2014 given alleging that the tenant or a person permitted on the property by her has seriously jeopardized the health or safety or lawful right of another occupant or the landlord.

That ground, if established, is a lawful ground for eviction under s. 47(1)(d)(ii) of the *Residential Tenancy Act* (the “Act”).

### Issue(s) to be Decided

Does the relevant evidence presented at hearing show on a balance of probabilities that the tenant has breached s. 47(1)(d)(ii)?

### Background and Evidence

The rental unit is a one bedroom apartment in a seven unit apartment building. The tenancy started in May 2006. The current monthly rent is \$690.00. The landlord holds the tenant's \$325.00 security deposit.

The tenant has resided in the apartment for over eight years without incident or issue, until recently with her now ex-husband, who has taken up residence in a rental unit in the same building. She lives with her two cats.

In the fall of 2014, concerned about the possible existence of fleas in the building, the landlord arranged for the services of a professional pest control company.

Notices were posted in the common area of the apartment building in late September or early October 2014 that the pest control company would be applying flea treatment on

October 7. The notices indicated the treatment would be applied only in the common laundry room and hallway.

Nevertheless, on the appointed day, a pest control technician attended at the tenant's suite in order to apply flea treatment. The tenant was not home. The caretaker and the technician attended at the tenant's ex-husband's door requesting that he keep her cats for a period of hours while the tenant's suite was treated. It appears that the chemical used to treat for fleas: 'dragnet,' is fatal to cats. In order to avoid the poison it is recommended that cats (and occupants) leave their suite for a period of eight hours, until the treatment dries and any particulate falls from the air.

The tenant's ex-husband declined to keep the cats.

The landlord scheduled a second treatment for November 8. This time notices were posted in the common areas and on the door of each apartment. Again, tenants were directed to leave their apartments with their pets for an eight hour period during and after the treatment.

On receiving the notice the tenant objected. In consultation with the SPCA, she was of view that the chemical in "dragnet" was a harmful chemical. She entered into correspondence with the landlord's representative Ms. L.V. to ascertain a less harmful chemical to use. She obtained from Ms. V.L. a written promise to use a chemical product not toxic to cats. It appears the tenant recommended a less harmful chemical to the Ms. L.V.; one that was not as harmful to cats.

On November 8 the pest control technician attended to treat the building with a flea eradicating chemical. It was "dragnet" again. The tenant refused entry for the technician to treat her suite.

In addition to her opposition to the use of "dragnet" in her suite, the tenant testified she has no place to take her cats for the eight hours required for them to be out of the suite. She indicated there were "cat hotels" that could take the animals, but she could afford such a facility. She indicated that there might be friends in the building who could take them, but then their suites would be treated as well so the cats could not be there either.

As a result of the November 8 incident, the landlord issued the Notice to End Tenancy in question.

It is not alleged that fleas are emanating from the tenant's suite. Indeed, the tenant provided the landlord with current veterinarian opinions that the cats were flea free. She

indicated that she regularly gives her cats feline specific flea treatment, uses a flea comb on them and even keeps a flea collar in the dust bag of her vacuum cleaner.

The landlord's representatives are of the view that fleas can be tracked in and out of the building and so treatment of the entire building, without exception for any suite, is necessary to ensure eradication.

### Analysis

The tenant was not properly served with the Notice to End Tenancy. The Notice intended for her was inadvertently served on a neighbour who tore it up. The torn up pieces were given to the tenant by her ex-husband. Out of caution, the tenant brought this application to challenge the Notice. Nevertheless, the tenant declined to pursue this defence, wishing to have the main issue raised by the Notice dealt with at this hearing.

The tenant filed 50 pages of documentary evidence on December 3 but failed to give the landlord a copy. The landlord's representatives declined to delay this hearing in order to receive that evidence. As it turned out, most all the documents adduced by the tenant were emails or other documents the landlords already had possession of.

The ending of a tenancy is a very serious matter. The burden on the landlord is to show on a balance of probabilities that good grounds exist to end the tenancy but the evidence tendered to point to that conclusion must be cogent and convincing.

In this case the landlord has not demonstrated that in order to properly treat the building for fleas it was necessary to treat the tenant's suite with flea poison after she had reasonably established to the landlord that her rental unit was flea free. It may be that such treatment was in fact necessary, but that opinion would properly be given by someone who could be considered an "expert" in the field, for example a qualified exterminator or pest control professional. The opinion of the landlord's representatives is not persuasive on this particular subject.

Without that evidence one cannot reasonably conclude that the tenant's refusal to permit her suite to be treated has "seriously jeopardized the health or safety or lawful right of another occupant or the landlord" as alleged in the Notice.

Additionally, it was not reasonable for the landlord to require the tenant to remove herself and her two pets from the suite for eight hours at her own expense. It should be noted that between a landlord and a tenant of an apartment building there is some "give

and take” in order for the landlord to carry out its obligation to maintain the premises. A tenant must expect some occasional inconvenience while the landlord attends to its statutory duty to provide and maintain residential property in a state of decoration and repair that (a) complies with the health, safety and housing standards required by law, and (b) having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant (s. 32(1) of the *Act*). At the same time, arranging for the care of two cats for eight hours is beyond an inconvenience. It is an undertaking imposing a significant, and in this case, costly, burden on this particular tenant.

This finding would be different had it been shown that the flea problem emanated from the tenant’s apartment.

### Conclusion

The tenant’s application is allowed. The Notice to End Tenancy dated November 17, 2014 is hereby cancelled.

As the tenant has been successful, she is entitled to recover her \$50.00 filing fee. I authorize the tenant to reduce her next rent due by \$50.00 in full satisfaction of the fee.

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: December 19, 2014

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Residential Tenancy Branch

