# Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

## DECISION

Dispute Codes CNC, MNDC, OLC, O, FF

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* ("*Act*") for:

- cancellation of the landlord's 1 Month Notice to End Tenancy for Cause, dated April 16, 2015 ("1 Month Notice"), pursuant to section 47;
- a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement, pursuant to section 67;
- an order requiring the landlord to comply with the *Act*, *Residential Tenancy Regulation* ("*Regulation*") or tenancy agreement, pursuant to section 62;
- other unspecified remedies; and
- authorization to recover the filing fee for this application from the landlord, pursuant to section 72.

The landlord's three agents, landlord JT ("landlord"), "landlord BS" and "landlord RH," the tenant and her two advocates, SI and AS, attended the hearing and were each given a full opportunity to be heard, to present their sworn testimony, to make submissions and to call witnesses. The tenant called "witness BM" to testify on her behalf at this hearing. Both parties were given an opportunity to ask questions and to cross-examine the witness. This hearing lasted approximately 86 minutes, in order to allow both parties to fully present their submissions and to hear from the witness.

The landlord confirmed that she is the president, landlord BS confirmed that he is the property manager, and landlord RH confirmed that he is the resident manager for the landlord company named in this application. All three agents confirmed that they had authority to speak on behalf of the landlord company at this hearing. The tenant confirmed that her two advocates had authority to present submissions on her behalf at this hearing.

The tenant confirmed personal receipt of the landlord's 1 Month Notice on April 16, 2015. In accordance with section 88 of the *Act*, I find that the tenant was duly served with the landlord's 1 Month Notice.

The landlord confirmed receipt of the tenant's amended application for dispute resolution hearing package ("Application"). In accordance with sections 89 and 90 of the *Act*, I find that the landlord was duly served with the tenant's Application.

The tenant confirmed receipt of the landlord's written evidence package for this hearing, with the exception of a one page witness statement, dated April 13, 2015, at page 33 of the landlord's written evidence package. The landlord indicated that she did not provide this statement to the tenant for confidentiality reasons. In accordance with sections 88 and 90 of the *Act*, I find that the tenant was duly served with the landlord's written evidence package, with the exception of the one page witness statement. During the hearing, the tenant objected to the admission of the witness statement, as she was not served with it prior to this hearing. Despite the landlord's consent, the tenant objected to the statement being read aloud, indicating that she did not have notice of this statement or any chance to prepare or respond to the statement prior to this hearing. At the hearing, I advised both parties that I would not consider the landlord's witness statement, as it was not served on the tenant prior to this hearing, in accordance with Rule 3.1 of the Residential Tenancy Branch ("RTB") *Rules of Procedure*.

During the hearing, the landlord made a verbal request for an order of possession, if the tenant's application to cancel the 1 Month Notice, was dismissed.

Issues to be Decided

Should the landlord's 1 Month Notice be cancelled? If not, is the landlord entitled to an order of possession?

Is the tenant entitled to a monetary order for money owed or compensation for damage or loss under the *Act*, *Regulation* or tenancy agreement?

Is the tenant entitled to an order requiring the landlord to comply with the *Act*, *Regulation* or tenancy agreement?

Is the tenant entitled to other unspecified remedies?

Is the tenant entitled to recover the filing fee for this application from the landlord?

Background and Evidence

The landlord testified that this month-to-month tenancy began on March 1, 2009 for a fixed term until August 31, 2009, after which it continued on a month-to-month basis. Monthly rent in the current amount of $822.00 is payable on the first day of each month.

A security deposit of $390.00 was paid by the tenant and the landlord continues to retain this deposit. A written tenancy agreement was provided by both parties for this hearing. Landlord RH stated that he became the new resident manager for this rental building on January 20, 2014. The landlord confirmed that the landlord company owner named in this application remained the same during the change of the resident manager.

*1 Month Notice*

The tenant entered into written evidence a copy of the 1 Month Notice. In that notice, requiring the tenant to end this tenancy by May 31, 2015, the landlord cited the following reason for the issuance of the notice:

- *Breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.*

In accordance with subsection 47(4) of the *Act*, the tenant must file her application for dispute resolution within ten days of receiving the 1 Month Notice. In this case, the tenant received the 1 Month Notice on April 16, 2015. The tenant amended her Application to dispute this notice on April 20, 2015. Accordingly, the tenant filed within the ten day time limit under the *Act*.

The landlord stated that the 1 Month Notice was issued because the tenant has breached her tenancy agreement by keeping a dog in her rental unit without prior written permission from the landlord ("pet policy"). The landlord indicated that the tenant signed an application for tenancy, advising about this pet policy. The landlord provided a copy of this application. The tenant also signed the tenancy agreement, which the landlord says was explained to the tenant, and where this pet policy is noted in clause 18 and again in clause 44 where the tenant initialled beside the statement "no pets allowed." Both parties agreed that the tenant brought her dog into the rental unit having full knowledge of the landlord's pet policy.

The landlord stated that it was only discovered that the tenant had a dog in her rental unit about a year prior to this hearing because of noise complaints made by the tenant's neighbours about the tenant's dog barking. The landlord stated that the tenant did not ask for written permission prior to having her dog in the rental unit. The landlord issued written letters to the tenant beginning in June 2014 until April 2015, about her breach of the pet policy, which the landlord says is a material term of the tenancy agreement that the tenant failed to correct within a reasonable time. Both parties provided copies of these letters. The landlord stated that the tenant failed to remove her dog despite repeated warnings from the landlord threatening eviction. The landlord stated that

breach letters were only issued to the tenant when complaints about the tenant's dog were made. The landlord indicated that the tenant breached the peaceful enjoyment of other tenants in the rental building because of her noisy dog.

The tenant stated that she brought a dog into her rental unit because she saw other tenants in the same building with dogs, realized it was a pet-friendly building and noticed that the pet policy was not being enforced by the landlord. The tenant indicated that the previous resident manager had a pet. The tenant indicated that she has had her dog for five years now, since 2010. She indicated that the previous resident manager allowed her to have a dog in her rental unit, she was not threatened with eviction or removal of her dog, and she was not advised about any complaints about her dog being noisy. The tenant explained that despite the new resident manager taking over in 2014, she still sees dogs in the elevator and there has been no hiding of pets in the building. The landlord indicated that she could not provide any information about the enforcement of the landlord's pet policy with the previous resident manager, as she has no information about it. Landlord RH testified that the previous resident manager did not enforce the pet policy properly.

The tenant maintained that she has received a number of breach letters from the landlord asking her to remove her dog from the rental unit. She stated that she is aware of other tenants in the rental building who have received the same letters as her and they have told her the letters are not valid and they have not removed their dogs from their rental units. The tenant noted that she did not receive any breach letters from the landlord from August 2014 until the end of March 2015. The tenant indicated that this was curious because if her dog was always barking as the landlord claims, the barking would not mysteriously cease for the above lengthy period of time. The tenant stated that the landlord is strategically pursuing her eviction because it has renovated a number of suites and is attempting to raise the rent in the building. The tenant noted that during these renovations in March 2015, a lot of noise was being made so her dog was barking in response to the noise during this time. She also indicated that the landlord is retaliating against her for her initial RTB application, which was filed on March 29, 2015, claiming for monetary compensation for a loss of quiet enjoyment. The tenant stated that she was served with the 1 Month Notice on April 16, 2015, after her initial application was filed. The tenant stated that the landlord has acted in bad faith because as far as she is aware, no other tenants have filed RTB applications against the landlord and none of them were evicted for having dogs or other pets.

The tenant stated that she was not aware of any noise complaints about her dog from other tenants in the building until this hearing, only from employees of the landlord. The landlord maintained that the complaints were from other tenants but due to privacy laws

and fear of retaliation, their names or the fact that they are tenants could not be disclosed to this tenant. The landlord also noted that it is difficult to get other tenants to write complaint letters because they are not always willing to get involved.

The tenant explained that the written statement from landlord RH, included with the landlord's written evidence package, stating that the tenant's next-door "neighbour" was vacating her rental unit because of the tenant's dog, is hearsay and should be given little to no weight at this hearing as the witness did not testify at this hearing and was not available for cross-examination. The tenant maintained that her neighbour's statement on the notice to vacate that "I dont want to pet allowed" does not translate to the tenant's barking dog being a problem. The tenant stated that her rental unit number, name or any identifying information about her was not included on this notice. The tenant also stated that this neighbour never personally approached her to complain about her dog. The tenant noted that her neighbour would not have lived there for six years if she could not deal with the barking noise from the tenant's dog. The tenant maintained that the landlord acted in bad faith by revealing a noise complaint only after the tenant filed her Application. Landlord RH testified that when he spoke with the tenant's neighbour, he was told that she was moving because of the tenant's dog because she could not deal with the noise any longer. Landlord RH stated that he told the neighbour that the tenant was given a 1 Month Notice for the barking dog but the neighbour stated that she could not wait any longer and had to leave.

The tenant indicated that her dog only barks if there is noise in the hallway or someone at the door. She stated that this barking lasts 30 seconds or less each time. She noted that her dog does not bark continuously. The tenant provided a letter, dated July 16, 2014, in which she offered to pay a pet damage deposit to the landlord and to resolve any issues being raised by the landlord, given that she had her dog in the rental unit for four years without any problems. The tenant testified that she tried unsuccessfully to find another home for her dog outside the rental unit. She noted that she bought a spray collar on March 27, 2015, to prevent her dog from barking, in order to appease the landlord following its letter to her, dated March 26, 2015. The landlord stated that the tenant's purchase of the spray collar confirms that she is aware of her noisy, barking dog. The tenant claims that the landlord has stated that this is a "no pets" policy that is being enforced rather than a noise issue with her dog. The tenant noted that it does not make sense that the landlord has indicated that her dog was making excessive noise around June 2014 when the breach letters were issued and then there was no noise from August 2014 to the end of March 2015 and when the tenant's RTB application was filed at the end of March 2015, the noise complaints began again. The landlord provided written evidence as well as testimony that in August and October 2014, the

tenant's rental unit was inspected and no dog appeared to be present, such that the landlord thought the problem was resolved.

Witness BM testified that he has been living in the same rental building as the tenant for four years. He stated that the landlord has not enforced a "no pet policy." He noted that his own neighbours have cats and dogs and that the previous resident manager had pets. He advised that the building has never been pet-free. Witness BM noted that, like the tenant, the landlord issued him letters and threatened to evict him for having a small five-pound dog in his rental unit. The tenant provided a copy of a letter, dated July 6, 2014, that she received from witness BM addressed to "neighbours" at the rental building and indicating that witness BM received an eviction letter from the landlord and after "consulting with other tenants who have received similar notices" the landlord's "eviction letters" did not comply with the *Act*. Witness BM stated that the landlord ultimately allowed him to keep his dog as long as he carries the dog in and out of the building in a small bag, which he says he does. He indicated that there have been no noise complaints about his dog. Witness BM indicated that the tenant has brought her dog to his rental unit and the dog does not bark in his presence. When presented with the opportunity, the landlord declined to provide any information about Witness BM's case, testifying that she did not have his tenant file in front of her and stating that she felt that his case was irrelevant to the tenant's situation.

The tenant stated that the law of agency applies, where the previous resident manager is an agent of the landlord. The tenant noted that the landlord's pet policy has not been enforced by the landlord against the tenant or any other tenants of the rental building, including witness BM. The tenant claims that she has relied on the authority of the previous landlord in allowing her to keep a dog in her rental unit, as she was not provided any verbal or written warnings that she was breaching a material term of the tenancy agreement at that time. The tenant maintained that the law of estoppel applies, whereby the previous resident manager's failure to advise the tenant of a breach and failure to pursue a removal of the dog or an end to this tenancy, implies consent for the tenant to keep a dog in her rental unit. The tenant also explained that the new resident manager has also failed to act in removing the tenant's dog for almost a year, as the first letter regarding a breach was issued to the tenant in June 2014 and this hearing was held in May 2015. The tenant notes that she should have been given immediate notice to remove her dog if this was a material breach and that she has been allowed to keep her dog in her rental unit for five years. She also noted that a material term must be so onerous that even a trivial breach would require an end to the tenancy.

*Loss of Quiet Enjoyment*

The tenant stated that she suffered a loss of quiet enjoyment for which she is entitled to one month's rent compensation of $822.00. She indicated that the landlord has been harassing her to get rid of her dog by constantly posting letters to her door with threats of eviction. She noted that the landlord is continuously knocking on her door and attempting to enter her rental unit to perform inspections. She noted that the landlord's own written evidence indicates that the landlord tried to deliver a letter to her rental unit three times on April 8, 2015. The landlord's notes indicate that the letter was finally posted to the tenant's rental unit door after three attempts to personally deliver the letter to her. The tenant stated that she gets nervous when she sees the landlord in the hallway and the elevator of the rental building. She explained that she has cried and lost sleep due to the landlord's harassing behaviour.

Analysis

While I have turned my mind to all the documentary evidence and the testimony of the parties and witness BM, not all details of the respective submissions and arguments are reproduced here. The principal aspects of the tenant's claim and my findings around each are set out below.

*1 Month Notice*

Where a tenant applies to dispute a 1 Month Notice within the required time limits, the onus is on the landlord to prove, on a balance of probabilities, the grounds on which the 1 Month Notice is based.

The landlord states that the tenant breached a material term of the tenancy agreement by keeping a dog in her rental unit without prior written permission. The landlord says it only found out about the dog due to complaints from other tenants and the landlord's employees regarding the dog's barking. The landlord says it is attempting to enforce the pet policy now because of these complaints.

A material term is defined in RTB Policy Guideline 8 as:

> *A material term is a term that the parties both agree is so important that the most trivial breach of that term gives the other party the right to end the agreement.*
>
> *To determine the materiality of a term during a dispute resolution hearing, the Residential Tenancy Branch will focus upon the importance of the term in the overall scheme of the tenancy agreement, as opposed to the consequences of the breach. It falls to the person relying on the term to present evidence and argument supporting the proposition that the term was a material term.*

> *The question of whether or not a term is material is determined by the facts and circumstances surrounding the creation of the tenancy agreement in question. It is possible that the same term may be material in one agreement and not material in another. Simply because the parties have put in the agreement that one or more terms are material is not decisive. During a dispute resolution proceeding, the Residential Tenancy Branch will look at the true intention of the parties in determining whether or not the clause is material.*

The tenant submitted that the Supreme Court of B.C. case of *Al Stober Construction Ltd. v. Long* ("*Long*") is similar to the tenant's case. The tenant noted that in the *Long* case, the landlord failed to act when it was aware of the tenant's pet. She stated that the Court held that the landlord did not apply the "no pets" policy uniformly and therefore it was not considered a material breach.

I have reviewed the *Long* case, cited by the tenant. That case involved a tenant who began his tenancy in June 1990 and the landlord served him with a notice to end tenancy in November 2000 for having a cat, contrary to the landlord's "no pet policy." The Court dismissed the landlord's petition for judicial review, finding that the Arbitrator's decision was not patently unreasonable such that interference could be made with the Arbitrator's decision. The Court noted that the Arbitrator accepted the tenant's independent witness' testimony regarding a number of other cats in the rental building. At paragraph 35, the Court held:

> *On the evidence before him, Arbitrator Covell concluded that the landlord had not consistently or uniformly enforced the "no pet rule". Although he did not spell out the reasoning that lack of uniform enforcement indicated that the term was therefore not material, it is implicit in his decision. This approach was not clearly irrational or such as to demand intervention by the court. If the term was "fundamental" to the agreement, the landlord would have rigorously enforced it. The arbitrator found as a matter of fact that it had not been enforced. The landlord has not persuaded me that the arbitrator's decision was patently unreasonable. Indeed, I would also find that it meets the standard of reasonableness simpliciter.*

In this case, I find that the landlord's pet policy is not a material term of the tenancy agreement. Although the tenancy agreement indicates that a breach of this pet policy could result in eviction after a failure to correct the breach, I do not find this to be a decisive factor in determining that it is a material term. I find that although the tenant was aware of this pet policy at the beginning of her tenancy, it was a policy that was not enforced in the rental building. When the tenant acquired her dog five years ago, she was not informed of a breach by the landlord. If the breach of this term was so material,

as per the landlord's evidence, the landlord should have immediately notified the tenant of the breach and the consequences of such breach being the removal of the dog or the end of her tenancy. The landlord company has not changed ownership since the tenant acquired her dog. There was merely a change in the resident manager of the building. The landlord did not provide any information about the previous resident manager or the enforcement of the pet policy during that time. The landlord has attempted to change its enforcement of the pet policy due to its change in resident managers.

Further, the landlord has allowed the tenant to keep a dog in her rental unit for five years since 2010, when the tenant says she acquired the dog. The landlord has known about the dog since at least the first breach letter was issued to the tenant in June 2014, almost one year prior to this hearing. No 1 Month Notice was issued by the landlord at that time. No enforcement action was taken by the landlord to pursue an eviction of the tenant until this hearing in May 2015. I accept witness BM's evidence that the landlord has allowed him to keep a dog in his rental unit, despite receiving a letter similar to the tenant's letter which threatened eviction for keeping a pet. The landlord refused to comment on witness BM's case, despite me providing her with this opportunity at the hearing. I accept the tenant's and witness BM's evidence that other tenants have pets in the rental building with the knowledge of the landlord. Both the tenant and witness BM indicated that other tenants are very open about their pets including cats and dogs, as they have seen them in the hallways and elevators. The tenant produced a letter from witness BM confirming that other tenants in the same rental building had received eviction letters for having pets. Further, both the tenant and witness BM indicated that the previous resident manager had a pet. Even landlord RH testified that the previous resident manager did not enforce the landlord's pet policy properly.

By failing to uniformly enforce the pet policy, I find that the landlord did not intend the policy to be a material term of the tenancy agreement. Otherwise, the landlord would have rigorously enforced this policy with the tenant, witness BM and all other tenants in the same building. Therefore, I find that the tenant's possession of her dog in the rental unit is not a breach of a material term of the tenancy agreement. I find that the landlord waived its rights to enforce its pet policy by allowing the tenant to have her dog in the rental unit for five years with no enforcement and by failing to uniformly enforce the policy with all tenants in the building.

For the reasons stated above and on a balance of probabilities, I find that the landlord did not provide sufficient evidence to demonstrate that the tenant has failed to comply with a material term and has not corrected the situation within a reasonable time after the landlord gave written notice to do so. Accordingly, I am not satisfied that the landlord

has met its onus, on a balance of probabilities, to end this tenancy for cause, based on the reasons in sections 47(1)(h)(i) and (ii) of the *Act*.

For the reasons outlined above, I allow the tenant's Application to cancel the landlord's 1 Month Notice, dated April 16, 2015. I dismiss the landlord's request for an order of possession. The landlord's 1 Month Notice, dated April 16, 2015, is cancelled and of no force or effect. This tenancy continues until it is ended in accordance with the *Act*. The tenant is permitted to reside in the rental unit with her dog for the remainder of this tenancy, unless the dog is required to be removed as per the City animal control department or by the order of a Court or the Residential Tenancy Branch.

*Loss of Quiet Enjoyment*

I find that the tenant did not provide sufficient evidence that the landlord caused her a loss of quiet enjoyment due to harassing behaviour. The tenant did not provide any medical documentation to show that she suffered any medical conditions due to the landlord's behaviour. The tenant did not provide any wage loss documentation to show that she missed time off from work or was unable to work to her full capacity, due to the landlord's behaviour. I do not find the landlord issuing letters to the tenant regarding her dog, to be harassing behaviour or a breach of quiet enjoyment. The landlord stated that letters were issued because there were complaints against the tenant's dog and it had to provide notice to the tenant in order for her to correct this breach. The landlord's written evidence indicates that three unsuccessful attempts were made to serve the tenant with a letter on April 8, 2015, after which the letter was posted to her door. I do not find that posting a letter to the door after failing to personally serve the letter to the tenant, is harassing behaviour or a breach of quiet enjoyment.
For the reasons stated above and on a balance of probabilities, I dismiss the tenant's claim for a monetary order of $822.00 for a loss of quiet enjoyment.

As the tenant has been partially successful in her Application, I allow her to recover her $50.00 filing fee from the landlord.

Conclusion

The tenant's Application to cancel the landlord's 1 Month Notice, dated April 16, 2015, is allowed. The landlord's request for an order of possession is dismissed. The landlord's 1 Month Notice, dated April 16, 2015, is cancelled and of no force or effect. This tenancy continues until it is ended in accordance with the *Act*. The tenant is permitted to reside in the rental unit with her dog for the remainder of this tenancy, unless the dog is required to be removed as per the City animal control department or by the order of a Court or the Residential Tenancy Branch.

The tenant is entitled to deduct $50.00 from a future rent payment at the rental unit, in full satisfaction of the monetary award for the filing fee for this Application.

The tenant's Application for a monetary order of $822.00 for a loss of quiet enjoyment is dismissed without leave to reapply.

The tenant's Application for "other" unspecified remedies is dismissed, as the tenant did not provide any evidence with respect to this portion of her claim.

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: May 25, 2015

Residential Tenancy Branch