



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding DOLE ENTERPRISES LTD.  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes: OPC CNC MNDC MNSD FF

### **Introduction:**

This hearing dealt with an application by the landlord pursuant to the *Residential Tenancy Act* (the Act) for orders as follows:

- a) An Order of Possession pursuant to Sections 47, and 55 for cause;
- b) A Monetary Order for damages pursuant to section 67;
- c) To retain a portion of the security deposit to offset the amount owing; and
- d) An order to recover the filing fee pursuant to Section 72.

This hearing also dealt with an application by the tenant pursuant to the Act for orders as follows:

- e) To extend the time to make this application;
- f) To cancel a Notice to End Tenancy for cause;
- g) To set limits on the landlord's right of entry pursuant to section 29; and
- h) To recover filing fees for this application.

### **SERVICE:**

Both parties attended and the tenant agreed they received personally the Notice to end Tenancy dated May 19, 2015 and the Application for Dispute Resolution by registered mail. I find that the tenant was properly served with the documents according to sections 88 and 89 of the Act. The landlord agreed they received the tenants' Application but said it was filed late (filed June 2 and received June 4, 2015) and should be dismissed.

### **Issue(s) to be Decided:**

The tenant was issued a Notice to End Tenancy dated May 19, 2015 for cause. Has the landlord proved on the balance of probabilities that there is good cause to end this tenancy and obtain an Order of Possession? Has the landlord proved that money for damages is owed and the amount and are they entitled to retain the security deposit to offset the amount owing and to recover the filing fee?

Or is the tenant entitled to any relief? Has the tenant proved on the balance of probabilities that the landlord is entering their unit unnecessarily and illegally contrary to section 29 and are they entitled to recover filing fees?

**Background and Evidence:**

Both parties attended and were given opportunity to be heard, to present evidence and to make submissions. The undisputed evidence is that the tenancy commenced on November 1, 2014, a security deposit of \$400 was paid and rent is currently \$810 a month including parking.

The landlord served the Notice to End Tenancy for the following causes:

1. The tenant or a person permitted on the property by them has
  - (a) Significantly interfered with or unreasonably disturbed the peaceful enjoyment of other occupants or the landlord;
  - (b) Seriously jeopardized the health, safety or lawful right of another occupant or the landlord;
  - (c) Has put the landlord's property at significant risk
  - (d) Has not done the required repairs of damage; and
  - (e) Has breached a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.

The landlord said that pets are not allowed in the building due to allergies. Clause 18 of the tenancy agreement sets out the prohibition and the advertisement to rent stated this. She said other tenants reported that these tenants had cats in March and April 2015 and a letter of breach was sent to the tenants on April 25, 2015. She said in an inspection on May 8, 2015, she did not find the cats but the tenants did not allow her access to all areas and she also noted there was a large aquarium filled with water contrary to the tenancy agreement. On May 19, a follow up inspection noted there was still water in the aquarium and no insurance coverage letter was provided to her as required by the tenancy agreement. On June 8, 2015, other tenants said they saw a cat in the window of this unit and the landlord said she saw two cats in the unit again and the unit smells strongly of cats. She said the tenants appear to hide the cats for a few hours when an inspection is scheduled and then bring them back for the tenant downstairs says he hears them all the time.

The tenant agreed they removed the cats in response to the breach letter and then brought them back three weeks later; they said they had advice that they could keep them based on early tolerance of the landlord. They said the landlord saw the cats and aquarium early in the tenancy and raised no objections. They said they did not

professionally clean the carpet in response to the breach letter for the carpets are clean and they could not afford it. They noted they emptied the large aquarium except for a few inches and some rocks but kept the fish in a smaller 2.5 gallon aquarium.

They objected to some of the other reasons the landlord gave for ending their tenancy. They said the lockers were poorly marked and were in two rooms so they inadvertently put some stuff in the wrong locker. They said they do recycle and the empty litter bucket found by the landlord was not theirs. They noted the unlicensed vehicle was removed and they don't use the dryer so it could not have been hair from their cats in it. They dispute the number and frequency of inspections and ask that the landlord's entry be restricted pursuant to section 29 of the Act.

They asked to extend the time to file their application as they had trouble filing it online and then had problems contacting the Residential Tenancy Branch by telephone. They did not attempt to file the Application to dispute until the 9<sup>th</sup> day after service of the Notice to End Tenancy and due to these difficulties, could not file it until June 2 so it was filed outside of the 10 day time limit to dispute. The female tenant said she had no access to a vehicle and then was sick with a lung infection. The landlord said the tenant is at home a lot, there is a bus and sky train available for transport and she had checked with the Branch and there were no computer problems. She disputes the granting of an extension.

In evidence is the tenancy agreement, the advertisement to rent, the notice to end tenancy, Notices to Enter, letters from other tenants regarding the cat, the breach letter and a letter from another tenant regarding an inspection.

On the basis of the documentary and solemnly sworn evidence presented at the hearing, a decision has been reached.

**Analysis:**

**Extension of Time:**

Pursuant to section 66(1) of the Act, the time limits may only be extended in exceptional circumstances. Residential Policy Guideline 36 sets out what might be included in exceptional circumstances. It states that an ordinary reason will not allow such an extension but it must be a strong and compelling reason and there must be some persuasive evidence to support the truthfulness of what is said. I find insufficient evidence to support that the tenant had a strong and compelling reason for not filing the Application in time. I find she did not start trying to file the dispute until the 9<sup>th</sup> day after the Notice to End Tenancy was served and then she said she had some procedural difficulties but provided no objective evidence of the unavailability of the Residential

Tenancy Branch or of her computer problems. The landlord provided evidence of no difficulties encountered by her when she telephoned early and waited for an answer and pointed out the tenant was home most of each day. I find the tenant's excuse does not constitute strong and compelling reasons for filing late and I dismiss the tenant's Application without recovery of the filing fee.

#### Order of Possession

I find that the landlord is entitled to an Order of Possession. According to section 47(5), if the tenant does not make an Application for Dispute Resolution within the time limits specified in section 47(4), the tenant is conclusively presumed to have accepted the tenancy ends on the effective date of the Notice and must vacate.

The landlord also gave evidence of the reasons that the tenancy was ended. I find the landlord satisfied the onus of proving on a balance of probabilities that they had good cause to end the tenancy. I find as fact that the tenancy agreement, advertisement for rent and the Application form all stated clearly that there were to be no pets. I find the weight of the evidence is that the tenant brought two cats into the unit which caused significant problems for the landlord as the building was promoted as being allergy free and many tenants relied on this when moving into the building. Although the tenant alleged she removed the cats in response to the breach letter, I find as fact that the cats were not permanently removed; I find the landlord did a number of inspections as she kept getting reports of the cats still being in the unit. I find that removing the cats for a few days is not a correction of a breach of the tenancy agreement when they were reinstalled shortly after. The tenant's own evidence in the hearing supports the landlord's evidence of deceptive behaviour as she agreed in the hearing that she brought the cats back into the unit. Furthermore, she agreed that she did not have the carpets professionally cleaned as required by the breach letter to get rid of possible allergens from the cats.

I find the tenants behaviour with the cat problem satisfied the onus of proving on a balance of probabilities that the tenant:

- (a) Significantly interfered with or unreasonably disturbed the peaceful enjoyment of other occupants or the landlord;
- (b) Seriously jeopardized the health, safety or lawful right of another occupant or the landlord;
- (c) Has put the landlord's property at significant risk
- (d) Has not done the required repairs of damage (refusal to professionally clean carpets); and
- (e) Has breached a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.

I find it is unnecessary to consider the other reasons cited for ending the tenancy.

**Monetary Order**

I find that the landlord entitled to \$125 as claimed to have the carpets professionally cleaned and to retain a portion of the security deposit to offset the amount owing.

**Conclusion:**

I find the landlord is entitled to an Order of Possession effective two days from service and a monetary order as calculated below. I find the landlord is entitled to retain a portion of the security deposit to offset the amount owing and to recover filing fees paid for this application. The balance of \$225 will remain in trust for the tenant to be dealt with in accordance with section 38 of the Act after the tenant vacates.

**Calculation of Monetary Award:**

Carpet clean and sanitize	125.00
Filing fee	50.00
Less security deposit (no interest 2014-15)	-400.00
Balance of deposit in trust for tenant	-225.00

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: July 21, 2015

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Residential Tenancy Branch

