



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding Hanover Properties Ltd  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      CNC, MNDC, MNSD, O, OLC, RPP, FF

### Introduction

This hearing dealt with the tenant's Application for Dispute Resolution seeking to cancel a notice to end tenancy, an order to have the landlord return personal property; and a monetary order.

The hearing was conducted via teleconference and was attended by the tenant and two agents for the landlord.

During the hearing the landlord did not request an order of possession should the tenant be unsuccessful in his Application for Dispute Resolution.

At the outset of the hearing the tenant clarified that he was seeking \$5,000.00 in punitive damages. I advised the parties that I had no authority to make an award for punitive damages under the *Residential Tenancy Act (Act)*. I therefore amended the tenant's Application to exclude the matter of compensation for punitive damages.

The tenant also clarified that the landlord was not holding any of his personal property. I amended the tenant's Application to exclude the matter of return of personal property.

### Issue(s) to be Decided

The issues to be decided are whether the tenant is entitled to cancel a 1 Month Notice to End Tenancy for Cause; to a monetary order for all or part of the pet damage deposit and to recover the filing fee from the landlord for the cost of the Application for Dispute Resolution, pursuant to Sections 18, 19, 47, 67, and 72 of the *Act*.

### Background and Evidence

The landlord submitted into evidence a copy of a tenancy agreement signed by the parties on December 28, 2013 for a 1 year fixed term tenancy that began on January 1, 2014 for a monthly rent of \$2,375.00 due on the 1<sup>st</sup> of each month with a security deposit of \$1,187.50. The tenant testified the current rent is \$2,470.00 and the landlord testified the current rent is \$2,420.00.

The tenancy agreement contains a clause specific to pets which is Clause 12 in the 4 page addendum that is attached to the standard tenancy agreement. Clause 12 states, at least in part, "...the Tenant shall not keep, or allow to be kept, any animal or pets, domestic or wild, fur bearing or otherwise, unless specifically permitted in writing by the Landlord...." The clause goes on to say that this term is a material term of the tenancy agreement.

The landlord submits that when the tenant moved into the rental unit the tenant had indicated that he had a pet dog that would be staying with him periodically and that time he was not sure if he would end up having the dog on a permanent basis. The landlord's agent testified that he told the tenant this would be ok but if he was to have the dog on a permanent basis then the landlord would expect a pet damage deposit to be paid.

The landlord's agent stated further that the tenant never did come back to him to advise him that he would be having the dog permanently. He states that he asked the tenant in March 2015 if the dog was now there permanently and when the tenant confirmed the dog was living in the unit the agent told him he would be required to pay a pet damage deposit.

The agent went on to say that the tenant asked if he could pay it at a later date and the agent agreed. The agent stated he was not available in the month of April 2015 but when he returned he found out the tenant had not paid the deposit.

On May 23, 2015 the landlord provided the tenant with a letter referring to their discussions in March 2015 and requesting a security deposit in the amount of \$1,210.00 and that it is to be remitted before May 31, 2015. On May 27, 2015 the landlord provided another letter to the tenant recounting the discussion when the tenant moved into the rental unit and that in March 2015 the tenant confirmed to the agent the dog was living permanently in the unit. Both letters were submitted into evidence.

The landlord stated that they had not received a payment of the pet damage deposit and on July 6, 2015 the landlord issued a 1 Month Notice to End Tenancy for Cause with an effective vacancy date of August 31, 2015 citing a breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so and security deposit or pet damage deposit that was not paid within 30 days as required by the tenancy agreement. A copy of the Notice was submitted into evidence.

The parties agree the tenant provided the landlord with a cheque in the amount of \$1,187.50 dated July 7, 2015. The tenant states that he submitted this amount because it represents ½ month's rent at the time the tenancy agreement was entered into.

The tenant submits that while he does recall a discussion with the landlord when he first moved into the rental unit about the dog he does not recall the substance of the

conversation. He did not provide any testimony in regard to the landlord's submission of the discussions in March 2015.

The tenant submits that the landlord was aware that the dog was with him the rental unit as the landlord's agent would see him on a daily basis taking out the dog for walks. The agent testified that he did see the dog occasionally but not every day.

The tenant submits that the only reason the landlord is bringing this forward as an issue is in retaliation for the tenant's pursuit of a monetary claim he brought against the landlord that was heard by an arbitrator with the Residential Tenancy Branch on June 22, 2015.

### Analysis

Section 20 of the *Act* states that a landlord must not require a pet damage deposit at any time other than when the landlord and tenant enter into a tenancy agreement or if the tenant acquires a pet during the tenancy.

When one party to a dispute provides testimony regarding circumstances related to a tenancy and the other party provides an equally plausible account of those circumstances, the party making the claim has the burden of providing additional evidence to support their position.

In this case the landlord submits that the tenant and the landlord had a discussion, at the start of the tenancy, about the pet being in the rental unit occasionally and what the landlord would want if the pet became a permanent resident in the unit. The tenant does not recall this discussion and the landlord provides no corroborating evidence of such a discussion.

As such, I find there is insufficient evidence to establish that this discussion ever took place. Therefore, in accordance with the tenancy agreement the tenant was required to seek written permission from the landlord when he had the pet move into the unit, but by his own testimony he had not read the tenancy agreement that closely and he never sought permission from the landlord.

Even if the discussion did take place the agreement would have required that the landlord be informed that the dog would be living in the rental unit on a permanent basis and there is no evidence the landlord was informed prior to March 2015.

As to the tenant's testimony that the landlord's agent saw the dog on a daily basis the landlord disputes seeing the dog on a daily basis but rather only occasionally. In this circumstance, the tenant has the burden to provide additional evidence to establish that the landlord had knowledge that the dog was in the property on a daily basis. The tenant has provided no corroborating evidence.

As such, I find the tenant has failed to provide sufficient evidence that the landlord was aware of the dog living in the rental unit on a permanent basis.

As to whether or not the landlord and tenant discussed these issues in March 2015, I find the landlord has provided evidence in the form of the two letters dated May 23, 2015 and May 27, 2015 that refers to the conversations held in March 2015.

Based on the above, I find the landlord was made aware of the tenant having a dog on a permanent basis in March 2015. I accept the landlord's testimony that the tenant was verbally asked for a pet damage deposit at that time. I also accept that the tenant continued to fail to pay the deposit even after a written demand letter was provided until after he was issued with the 1 Month Notice to End Tenancy for Cause or over 40 days after the written demand letter was received by the tenant.

Section 47 of the *Act* allows a landlord to end a tenancy by giving notice to end the tenancy if the tenant does not pay the security deposit or pet damage deposit within 30 days of the date it is required to be paid under the tenancy agreement or the tenant has failed to comply with a material term, and has not corrected the situation within a reasonable time after the landlord gives written notice to do so.

As I have determined that the landlord had the right to request the pet damage deposit and that the tenant had failed to pay the deposit within 30 days I find the landlord had authority, pursuant to Section 47(1)(a) to end the tenancy by issuing a 1 Month Notice.

### Conclusion

Based on the above, I find the 1 Month Notice to End Tenancy for Cause issued by the landlord on July 6, 2015 is valid and the tenant must vacate the rental unit. As a result, I dismiss the tenant's Application for Dispute Resolution in its entirety.

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 17, 2015

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Residential Tenancy Branch

