



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding SUNDEN MANAGEMENT LTD  
and [Tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      CNC

### Introduction

This hearing was scheduled to address the Tenant's application to cancel a 1 Month Notice to End Tenancy issued for an alleged breach of a material term of the tenancy agreement. Both parties appeared at the hearing and were provided the opportunity to make relevant submissions, in writing and orally pursuant to the Rules of Procedure, and to respond to the submissions of the other party.

### Preliminary and Procedural Matters

At the start of the hearing the Landlord's name was corrected to read as follows: "SUNDEN MANAGEMENT LTD". The Tenant's application has been amended accordingly.

### Issue to be Decided

Should the 1 Month Notice to End Tenancy for Cause be upheld or cancelled?

### Background and Evidence

The Landlord and Tenant agree that they entered into a written tenancy agreement for a tenancy that commenced in June, 2007. Only one page of the tenancy agreement was provided by the Tenant; however, the Landlord and Tenant both agreed that the tenancy was a month to month tenancy and that rent in the amount of \$1,535.00 was due each month. The Landlord and Tenant also agreed that a security deposit of \$750.00 and a pet deposit of \$200.00 were paid at that time.

The Landlord testified that she did not provide a copy of the tenancy agreement because the Tenant had provided one page. The Landlord agreed that the page the Tenant provided was accurate.

### 1 Month Notice to End Tenancy for Cause

On February 12, 2016, the Landlord sent a 1 Month Notice to End Tenancy for Cause to the Tenant by registered mail. The Landlord indicated the following reason for ending the tenancy on 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.*

The Landlord relies on clause 9 of the Tenancy Agreement that only one cat is permitted in the rental unit.

The Tenant disputed the Notice within the applicable timeframe.

As the burden of proof in this matter rests with the Landlord, she testified first. She testified that on November 9, 2015, they conducted a routine house inspection of the rental unit. According to the Landlord, this was the first time they became aware of the 4 cats and 1 rabbit in the rental unit. The Landlord testified that upon checking the tenancy agreement they noted that the agreement permitted one cat and that a \$200.00 pet deposit was paid.

The Landlord also stated that she discussed the additional pets with the property owner who was agreeable to allowing two cats in the rental unit if an additional pet deposit was paid. The Landlord states that these options were proposed to the Tenant. The Landlord states that although they attempted to discuss the matter with the Tenant, the Tenant would not talk about it, or take their phone calls.

The Landlord conducted another inspection of the rental unit on January 26, 2016, and observed that the cats were still present. On February 2, 2016, the Landlord sent the Tenant another letter regarding the presence of the cats and that they would advise her of their decision on the matter. On February 15, 2016, the Landlord sent the Tenant a letter stating that they have no alternative but to issue a Notice to End Tenancy due to a breach of the contract regarding too many pets. The Landlord testified that they did conduct routine inspections of the unit twice per year and that they were not aware that the Tenant had additional pets until November 9, 2015. The Landlord stated that the Tenant never requested permission to have additional cats. The Landlord also testified

that they gave the Tenant ample opportunity to discuss this issue or remove the cats but the Tenant would not compromise.

The Tenant testified that the cats have been in the rental unit for six years, as she got two more cats in the spring of 2010, and one more cat when the basement Tenant left it behind in 2011. The Tenant states that the pet Rabbit is now gone. In response to the Landlord's testimony that she would not discuss the cats, the Tenant testified that she did not wish to engage in conversations with the Landlord without a witness present. The Tenant testified that the Landlord conducted regular inspections, room to room, often at times when she was not home, and that the Landlord had to have been aware that there was more than one cat in the residence.

### Analysis

After hearing the oral testimony and documentary evidence of the Landlord and the Tenant, I am not satisfied that clause 9 of their Tenancy Agreement which sets out the number of cats permitted in the rental unit is a material term.

I am not assisted by having only one page of the Tenancy Agreement before me. The Landlord did not provide a copy. I have no evidence before me on whether or not the agreement contained consequences for a breach of the pet clause. The one page of the Tenancy Agreement provided by the Tenant states:

*In the cases in which a pet is allowed, one half months rent deposit is required and, any and all damages are the sole responsibility of the Tenant. Pets: "one cat"*

I have also considered that the Landlord was willing to allow more than "one cat" if the Tenant would provide an additional pet deposit. This willingness to alter the "one cat" term indicates to me that the Landlord does not consider a breach to be so important that it justifies ending the tenancy.

I also give more weight to the Tenant's evidence that room to room inspections were conducted twice a year, and that over a period of six years it would be hard to miss the cats. The Tenant provided evidence of a letter from the Landlord, after an inspection, where the Landlord provided a very detailed list of defects throughout the residence that needed to be cleaned or rectified. This indicates to me that the Landlord was very thorough in conducting inspections and it is more likely than not they would have noticed the cats. The delay in acting on the breach also indicates to me that the pet

clause is not considered by the Landlord to be a material term of the tenancy agreement.

I find that the Landlord has not proven that there are grounds to end the tenancy for a breach of a material term and I therefore order that the Notice be set aside and is of no force or effect. As a result, the tenancy will continue until ended in accordance with the Act.

While the Landlord did not strictly enforce this term in the past, it is clear that the Landlord considers it an important term and wants to enforce it now. The Tenant did not seek or gain prior approval from the Landlord before adopting more cats. The Landlord would like the Tenant to have one cat in the rental unit.

Section 62 (3) of the Act authorizes me to make any order necessary to give effect to the rights, obligations and prohibitions under this Act, including an order that a landlord or tenant comply with this Act, the regulations or a tenancy agreement and an order that this Act applies.

I order the Tenant to comply with the Tenancy Agreement term that allows for only one cat in the rental unit. The Tenant must comply with my order by May 31, 2016.

Both parties should be aware that section 47 (1) of the Act provides a remedy for non-compliance with an order.

### Conclusion

The Notice is cancelled and the tenancy will continue.

The Tenant must comply with the Tenancy Agreement term that allows for only one cat in the rental unit by May 31, 2016.

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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: April 11, 2016

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Residential Tenancy Branch