



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNC MNDC O

### Introduction

This hearing was convened to hear matters pertaining to an Application for Dispute Resolution filed by the Tenants on April 28, 2016. The Tenants filed seeking an order to cancel a 1 Month Notice to end tenancy for cause; for other reasons; and for a Monetary Order for money owed or compensation for damage or loss under the *Act*, Regulation, or tenancy agreement.

The hearing was conducted via teleconference and was attended by the Landlords; the Tenant; the Landlord's Witness (hereinafter referred to as Witness); and a neighbor to the rental unit (hereinafter referred to as Neighbor). I instructed the Witness and Neighbor to disconnect from the hearing and informed them that I would call them back into the hearing if I determined that I would hear submissions from them.

The Landlords and Tenant each gave affirmed testimony. I explained how the hearing would proceed and the expectations for conduct during the hearing in accordance with the Rules of Procedure. Each party was provided an opportunity to ask questions about the process; however, each declined and acknowledged that they understood how the conference would proceed.

The Tenant stated the tenancy agreement was signed by him and the female Landlord; despite the male Landlord's name also being listed as a landlord on the Application. The Tenant questioned the authority of the male Landlord as he dealt with the male Landlord regarding several tenancy matters. Neither party submitted a copy of the tenancy agreement into evidence.

Section 1 of the Act defines a landlord in relation to a rental unit, to include the owner of the rental unit, the owner's agent or another person who, on behalf of the landlord permits occupation of the rental unit under a tenancy agreement, or exercises powers and performs duties under this Act, the tenancy agreement or a service agreement.

As per the foregoing, and despite the absence of the male Landlord's signature on the tenancy agreement, I find the male Landlord has acted in the capacity of a landlord, in accordance with section 1 of the *Act*. There was insufficient evidence before me that would suggest the male Landlord no longer had authority to continue acting as a landlord.

The male Tenant affirmed he would be representing both applicant Tenants in this proceeding. The female Landlord submitted the majority of the Landlords' evidence

during this proceeding. Therefore, for the remainder of this decision, terms or references to the Tenants and Landlords importing the singular shall include the plural and vice versa, except where the context indicates otherwise.

The Landlord confirmed receipt of the Tenants' application and first submission of evidence. No issues were raised regarding receipt of those documents. The Landlord stated she received a second package of documents from the Tenant on May 31, 2016. The Tenant submitted evidence that he had been recovering from surgery which prevented him from submitting his additional evidence sooner. The Landlord confirmed she had read the documents and was prepared to speak to them during this hearing. Accordingly, I considered the Tenants' relevant submissions as evidence for these proceedings.

The Tenant testified he received the Landlords' evidence on May 19, 2016. No issues were raised by the Tenant regarding receipt of those documents. A detailed review was conducted with the Tenant referencing each item submitted by the Landlords. Accordingly, I considered the Landlords' relevant submissions as evidence for these proceedings.

Residential Tenancy Rules of Procedure, Rule 2.3 states that, in the course of the dispute resolution proceeding, if the arbitrator determines that it is appropriate to do so, he or she may dismiss the unrelated disputes contained in a single application with or without leave to reapply.

Upon review of the Tenants' application I have determined that I will not deal with all the dispute issues the Tenants have placed on their application. For disputes to be combined on an application they must be related. Not all the claims on this application are sufficiently related to the main issue relating to the Notice to end tenancy. Therefore, I will deal with the Tenant's request to set aside or cancel the Landlords' Notice to End Tenancy issued for cause; and I dismiss the balance of the Tenant's claim with leave to re-apply.

The Landlords submitted a completed "Schedule of Parties" form listing their Witness and the Neighbor. The Landlord stated she thought that form was required in order to have their Witness and the Neighbor speak at the hearing. Upon further clarification I informed the parties that I would hear the Witness's submissions relating to the presence of a cat in the Tenant's rental unit.

The Landlord stated the Neighbor was not their tenant and he resided on someone else's property which was not related to their rental unit. The Landlord said the Neighbor would be submitting evidence regarding civil issues he was involved in with the Tenant. This hearing was convened to hear matters under the jurisdiction of the *Residential Tenancy Act*, (the Act). Therefore, I declined to hear submissions from the Neighbor for want of jurisdiction.

Each person was provided with the opportunity to present relevant oral evidence, to ask questions, and to make relevant submissions. Following is a summary of those submissions and includes only that which is relevant to the matters before me.

Issue(s) to be Decided

1. Should the 1 Month Notice to end tenancy be upheld or cancelled?
2. If upheld, is the Landlord entitled to an Order of Possession?

Background and Evidence

The parties entered into a month to month tenancy agreement that began on May 1, 2013. The tenancy agreement was comprised of the Residential Tenancy Branch form RTB 1 with no addendums attached. As per the written agreement rent was initially \$1,000.00 and was due on or before the first of each month. Rent was subsequently increased to \$1,025.00 per month. On May 1, 2013 the Tenant paid \$500.00 as the security deposit.

The undisputed evidence was the pet deposit section of the tenancy agreement was marked not applicable because the Landlords were told the Tenant did not have a pet.

The Landlord testified she had to attend the rental unit on April 20, 2016 for the purpose of having an appraisal of the property. She stated she had arrived 20 minutes early so she parked on the side of the road and sat in her car waiting for the scheduled appointment time. She said while she was in her car she saw the Tenant come out of the house and put a pet carrier into his vehicle.

The Landlord submitted that when it was her appointment time she approached the Tenant and asked if he had a pet. She said the Tenant replied "it is none of your business". The Landlord said she glanced inside the Tenant's vehicle and saw a cat inside the pet carrier. She said she waited until the appraisal was completed and asked the Tenant a second time if he had a pet and he told her that it was none of her business again. She said she told the Tenant he was required to tell her if he had a pet in the rental unit and that he would be required to pay her a pet deposit. She said the Tenant told her he would not pay her a pet deposit.

The Landlord stated the day after the appraisal, April 21, 2016 they served the Tenant with a 1 Month Notice to end tenancy for cause, which was posted to his door.

A copy of the 1 Month Notice was submitted into evidence. The 1 Month Notice was issued April 21, 2016 listing an effective date of May 31, 2016. The 1 Month Notice was issued pursuant to section 47 of the *Act* listing the following details of the cause for the reason the Notice was issued:

*Tenant failed to follow rental contract – no pets on property.*

The Tenant testified that he had a different version of the facts than the Landlord and then said the Landlord had lied. He stated he had not breached a term of his tenancy agreement because the tenancy agreement did not stipulate pets were not allowed. He confirmed the tenancy agreement indicated a pet deposit was not applicable. He then said the tenancy agreement did not state there were addendums to the tenancy agreement nor did he sign an addendum. He argued he was never given anything that said pets were not allowed.

The Tenant argued the cat which the Landlord saw him put in his truck on April 20, 2016 was his daughter's cat. The Tenant asserted that when the Landlord asked about the cat he said he told her "it was really none of her business".

The Tenant testified he does not own a cat. He asserted his daughter lived part time with him and part time with his ex-wife. He stated his daughter stays two or three days a week with him and his daughter's cat "goes where she goes." He then said the cat has stayed overnight when his daughter was "visiting". The Tenant followed up that statement with saying "the cat stays in the kennel all of the time when he is here". After which the Tenant stated "my daughter rarely brings the cat to visit".

As the Tenant continued his testimony uninterrupted, the Tenant began to refer to the cat as "my cat". At times he would catch himself and would change his submission being adamant that the cat was his daughter's cat not his cat.

The Tenant confirmed that when the Landlord told him that he would have to pay a security deposit he refused. He said he refused to pay a pet deposit because the cat does not live with him. The Tenant confirmed he had not requested permission to have the cat inside the rental unit and argued the cat was just visiting so he did not need to request permission. The Tenant then asserted the cat visits were rare.

The Tenant stated he had been ill during the month of May 2016 so his daughter did not visit. He stated his daughter and her cat stayed overnight only two nights in April 2016 and one other time during the day.

The Landlord disputed the Tenant's submissions and said the Tenant's daughter was not at the rental unit on April 20, 2016 when she saw the cat. She said their Witness could testify to the fact the cat was living there. She asserted the Tenant never told her it was his daughter's cat nor did he tell her the cat was visiting when she approached him on April 20, 2016. She said the Tenant simply told her it was none of her business, even after she tried to explain she was entitled to a pet deposit.

The Witness was brought back into the hearing and submitted affirmed testimony that she is the owner of the other side of the duplex attached to the Tenant's rental unit. She stated that approximately five or six months ago she saw the orange "tabby looking" cat sitting at the window inside the Tenant's rental unit. She also saw the cat twice in her back yard at her cat's food dish.

Each party was given the opportunity to ask the Witness questions. The Tenant asked how the Witness knew the cat was his. The Witness responded that she had seen the cat inside sitting at his window and it was the same cat she saw outside. She asserted she has lived in the neighbourhood for over 9 years and she knows the neighbors and their pets.

In closing, the Tenant stated the Witness “did not describe my cat. My cat is not a tabby my cat is a Maine Coon cat”. The Tenant pointed to the Landlords’ written submission where they asked why he denied having a pet and said he had advised the Landlord that it was his daughter’s cat. The Tenant submitted his daughter was 19 and that she had left for an appointment on April 19, 2016, leaving the cat with him while she attended her appointment.

The parties were given the opportunity to try and settle these issues; however, the parties were too far apart and they both indicated they were not willing to negotiate a settlement at this time.

The Landlord confirmed the Tenant had paid the outstanding utilities and as of the date of this hearing the rent and utilities had been paid in full. She asserted there were many other issues regarding this tenancy and she requested possession of the rental unit.

### Analysis

After careful consideration of the foregoing, documentary evidence, and on a balance of probabilities I find as follows:

Section 62 (2) of the *Act* stipulates that the director may make any finding of fact or law that is necessary or incidental to making a decision or an order under this *Act*.

Section 52 of the *Act* stipulates in order to be effective, a notice to end a tenancy must be in writing and must: be signed and dated by the landlord or tenant giving the notice; give the address of the rental unit; state the effective date of the notice; state the grounds for ending the tenancy; and when given by a landlord, be in the approved form.

Upon review of the 1 Month Notice to End Tenancy, I find the Notice was served upon the Tenant in a manner that complies with the *Act*. In addition, based on both party’s interpretation of the reason why the 1 Month Notice was issued, I find, pursuant to section 62 of the *Act*, the Notice was issued for the reason that the tenant had breached a material term of the tenancy agreement by allowing the cat to be inside the rental unit. Accordingly, I find the 1 Month Notice to end tenancy dated April 21, 2016 was issued in accordance with section 52 of the *Act*. Therefore, the effective date of the Notice was May 31, 2016.

Where a Notice to End Tenancy comes under dispute, the landlord has the burden to prove the tenancy should end for the reason(s) indicated on the Notice. Where more

than one reason is indicated on the Notice the landlord need only prove one of the reasons.

The undisputed evidence was the parties entered into a written tenancy agreement which consisted of the Residential Tenancy Branch Tenancy Agreement form RTB-1. No additions or addendums were added to the written tenancy agreement. Furthermore, the tenancy agreement did not stipulate pets were not allowed. That being said, I accept the Landlord's submission that a pet deposit was "not applicable" because the Tenant did not have a pet at the time the tenancy was formed.

Section 18 of the *Act* stipulates:

(1) A tenancy agreement **may** include terms or conditions doing either or both of the following:

(a) prohibiting pets, or restricting the size, kind or number of pets a tenant may keep on the residential property;

(b) governing a tenant's obligations in respect of keeping a pet on the residential property.

(2) If, after January 1, 2004, **a landlord permits a tenant** to keep a pet on the residential property, the landlord **may require** the tenant to pay a pet damage deposit in accordance with sections 19 [*limits on amount of deposits*] and 20 [*landlord prohibitions respecting deposits*].

[Reproduced as written with my emphasis in bold text]

Section 19(1) of the *Act* states a landlord must not require or accept either a security deposit or a pet damage deposit that is greater than the equivalent of 1/2 of one month's rent payable under the tenancy agreement.

[Reproduced as written]

Section 20(c) of the *Act* provides that a landlord may require a pet damage deposit at any time other than

(i) when the landlord and tenant enter into the tenancy agreement, or

(ii) if the tenant acquires a pet during the term of a tenancy agreement, **when the landlord agrees that the tenant may keep the pet on the residential property**

[Reproduced as written with my emphasis in bold text]

I favored the Landlords' submissions over the Tenant's submissions regarding the presence of a cat inside the rental unit. I further accept the cat was brought into the rental unit without prior approval from the Landlords. I favored the Landlords' submissions as they were forthright and consistent which lends credibility to the Landlords' submissions. In addition, the Landlord's submissions were supported by the Witness's testimony.

I favored the Landlords' submission over the Tenant's submissions as the Tenant provided inconsistent testimony. Specifically, the Tenant was inconsistent with his references regarding ownership of the cat. The Tenant continually changed his

submission throughout his testimony referring to the cat as being “my cat” more often than “my daughter’s cat”. When the Tenant was describing the type of cat he had he referred to the cat as “my cat”. Furthermore, the Tenant initially stated his daughter resided with him 2 or 3 days per week and her cat goes where she goes. Then he stated the cat has only stayed over two nights.

There was also conflicting evidence regarding how the cat was allowed to be inside the rental unit. The Tenant initially stated the cat was always kept inside the pet kennel and did not dispute the fact the Witness saw the cat sitting inside at his window.

The *Act* does not stipulate a pet must be owned by a tenant in order for sections 18, 19, and 20 of the *Act* apply. Rather, the *Act* speaks to a tenant keeping a pet on the residential property. By his own submission the Tenant confirmed he did not seek permission from the Landlords prior to allowing the cat to be kept inside the rental unit; regardless of the length of stay or visit.

Furthermore, the Tenant simply dismissed the Landlord’s inquiry into the presence of the cat and told her it was none of her business. The Tenant also acknowledged that he refused to pay a pet deposit.

After consideration of the totality of the evidence before me, and notwithstanding the tenancy agreement not stating pets were prohibited, I find the Tenant has breached sections 18, 19, and 20 of the *Act* by: not seeking permission to keep a cat inside the rental unit, regardless of the length of time of the cat’s stay; the Tenant refusing to discuss the matter with the Landlord(s); and the Tenant’s refusal to pay a pet deposit.

Although the Tenant has been found to be in breach of the *Act*, I found the Landlord submitted insufficient evidence to prove the Tenant was in breach of a material term of the tenancy agreement. I make this finding in part because the tenancy agreement did not stipulate no pets were allowed. Accordingly, I find there to be insufficient evidence to uphold the Notice to End Tenancy for the reason stipulated on the 1 Month Notice issued April 21, 2016. Therefore, I grant the Tenant’s application to cancel the 1 Month Notice to end tenancy issued April 21, 2016. Accordingly, this tenancy continues to be in full force and effect until such time as it is ended in accordance with the *Act*.

In addition, I find the Tenant is now required to pay the Landlords a pet deposit as has been found to have brought a pet into the rental property. Accordingly, I hereby Order the Tenant to pay the Landlords the pet deposit in the amount of \$500.00 (1/2 of the original rent amount) no later than **July 3, 2016**. This order is legally binding and remains in full force and effect even if the Tenant ceases to have the cat in the rental unit. The Landlords will hold the pet and security deposits in trust and will disburse said deposits at the end of the tenancy, in accordance with section 38 of the *Act*.

If the Tenant fails to pay the Landlords the pet deposit by July 3, 2016 in accordance with the aforementioned order, the Landlords will be at liberty to issue the Tenant a 1 Month Notice to end tenancy for cause checking off the reason: *Non-compliance with an*

*order under the legislation within 30 days after the Tenant received the order or the date of the order.*

Conclusion

The Tenant was successful with his request to cancel the 1 Month Notice and was ordered to pay the Landlords a \$500.00 pet deposit no later than **July 3, 2016**. The Tenant's request for monetary compensation was dismissed, with leave to re-apply.

This decision is final, legally binding, 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: June 03, 2016

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Residential Tenancy Branch