



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      OPB, FF, O

### Introduction

This hearing was convened by way of conference call concerning an application made by the landlord seeking an Order of Possession for breach of an agreement and to recover the filing fee from the tenant for the cost of the application.

The landlord and the tenant attended the hearing, and the tenant was accompanied by a witness. The landlord and the tenant's witness gave affirmed testimony, and the parties were given the opportunity to question each other respecting the testimony and evidence provided, all of which has been reviewed and is considered in this Decision. No issues with respect to service or delivery of documents or evidence were raised.

### Issue(s) to be Decided

Has the landlord established that an Order of Possession for breach of an agreement should be granted?

### Background and Evidence

**The landlord** testified that this fixed-term tenancy began on December 1, 2014 and expired on May 31, 2015, and the tenant still resides in the rental unit. Rent in the amount of \$860.00 per month is currently payable on the 1<sup>st</sup> day of each month and there are no rental arrears. In November, 2014 the landlord collected a security deposit from the tenant in the amount of \$430.00 which is still held in trust by the landlord and no pet damage deposit was collected. The rental unit is an apartment in a complex containing 36 units. A copy of the tenancy agreement has been provided but one of the pages is missing.

The landlord further testified that sometime in May, 2016 a neighbour called the landlord saying that the tenant had a cat, and if the tenant is permitted a cat the neighbour also

wants a cat. The landlord knocked on the tenant's door, the tenant opened it, and the landlord saw the cat.

The landlord also testified that he gave the tenant notice of an inspection for the smoke detector and heat detector, but when the inspector arrived, no one opened the door. The inspector attempted to open it with the master key but it wouldn't work. The landlord went there sometime after that and the tenant opened the door.

The landlord gave the tenant a note dated June 22, 2016, a copy of which has been provided. It states, in summary, that it serves as 3 days notice to remove the cat from the suite and change the lock as it was before, or the tenant will be evicted.

The landlord also testified that the tenant threw a coffee cup at his chest which was witnessed by a neighbour. The landlord didn't call police because he had an important appointment to attend.

The landlord also testified that the Residential Tenancy Branch advised that due to a breach of the agreement, the landlord is not required to issue a notice to end the tenancy, and no pets is a material term of the tenancy.

**The tenant's witness** testified that she is a case worker for the tenant.

The witness also testified that the tenant became aware that the landlord was not pleased about the cat on June 22, 2016, and the witness was notified right away. The witness called the landlord the next day to try to resolve it and suggested a pet damage deposit, but the landlord refused. The witness apologized for not having given him a copy of the key prior, and the landlord refused a copy of the key for the new lock. The witness' intention was to solve the 2 issues. The witness also told the landlord that a written eviction notice was required, which was never received by the tenant.

The tenant's version of the coffee cup incident was that the tenant didn't throw it, but dropped it.

The tenant became unwell on June 23, 2016 and was admitted to hospital on the 24<sup>th</sup>. He has been in the rental unit since 2014 and has been a good tenant, gave the cat to his mother on June 22 or 23, 2016, and the witness apologized to the landlord. The tenant does not know where the original lock is, but the witness will ensure the landlord gets a copy of the key for the new lock. The tenant has a lot of support to assist with the tenancy.

## Analysis

The landlord testified that the Residential Tenancy Branch advised that if the tenant has breached a term of the tenancy agreement, the landlord does not have to serve a notice to end the tenancy, and none was served. The *Residential Tenancy Act* states:

**44** (1) A tenancy ends only if one or more of the following applies:

(a) the tenant or landlord gives notice to end the tenancy in accordance with one of the following:

(i) section 45 [*tenant's notice*];

(ii) section 46 [*landlord's notice: non-payment of rent*];

(iii) section 47 [*landlord's notice: cause*];

(iv) section 48 [*landlord's notice: end of employment*];

(v) section 49 [*landlord's notice: landlord's use of property*];

(vi) section 49.1 [*landlord's notice: tenant ceases to qualify*];

(vii) section 50 [*tenant may end tenancy early*];

(b) the tenancy agreement is a fixed term tenancy agreement that provides that the tenant will vacate the rental unit on the date specified as the end of the tenancy;

(c) the landlord and tenant agree in writing to end the tenancy;

(d) the tenant vacates or abandons the rental unit;

(e) the tenancy agreement is frustrated;

(f) the director orders that the tenancy is ended.

(2) [Repealed 2003-81-37.]

(3) If, on the date specified as the end of a fixed term tenancy agreement that does not require the tenant to vacate the rental unit on that date, the landlord and tenant have not entered into a new tenancy agreement, the landlord and tenant are deemed to have renewed the tenancy agreement as a month to month tenancy on the same terms.

(underlining added).

In this case, the landlord did not give a notice to end the tenancy, and the tenancy agreement does not specify that at the end of a fixed term the tenant must move out.

Section 47 of the *Act* states:

**47** (1) A landlord may end a tenancy by giving notice to end the tenancy if one or more of the following applies:

(a) 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;

(b) the tenant is repeatedly late paying rent;

(c) there are an unreasonable number of occupants in a rental unit;

(d) the tenant or a person permitted on the residential property by the tenant has

(i) significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property,

(ii) seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant, or

(iii) put the landlord's property at significant risk;

(e) the tenant or a person permitted on the residential property by the tenant has engaged in illegal activity that

(i) has caused or is likely to cause damage to the landlord's property,

(ii) has adversely affected or is likely to adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant of the residential property, or

(iii) has jeopardized or is likely to jeopardize a lawful right or interest of another occupant or the landlord;

(f) the tenant or a person permitted on the residential property by the tenant has caused extraordinary damage to a rental unit or residential property;

(g) the tenant does not repair damage to the rental unit or other residential property, as required under section 32 (3) *[obligations to repair and maintain]*, within a reasonable time;

(h) the tenant

(i) has failed to comply with a material term, and

(ii) has not corrected the situation within a reasonable time after the landlord gives written notice to do so;

(i) the tenant purports to assign the tenancy agreement or sublet the rental unit without first obtaining the landlord's written consent as required by section 34 *[assignment and subletting]*;

(j) the tenant knowingly gives false information about the residential property to a prospective tenant or purchaser viewing the residential property;

(k) the rental unit must be vacated to comply with an order of a federal, British Columbia, regional or municipal government authority;

(l) the tenant has not complied with an order of the director within 30 days of the later of the following dates:

- (i) the date the tenant receives the order;
- (ii) the date specified in the order for the tenant to comply with the order.

(Underlining added).

I also refer to the Residential Tenancy Branch website, which contains information about ending a tenancy without issuing a notice:

## Ending a Tenancy Early

There are some circumstances when it's necessary to end a tenancy as soon as possible – when waiting for a regular notice to take effect would be unreasonable or unfair. Applying for dispute resolution to end the tenancy early is required in these situations.

**A landlord can apply** for an order to end a tenancy without the usual notice if a tenant, (including their pets or guests) have done one of the following:

- Significantly interfered with or unreasonably disturbed another resident or the landlord
- Seriously endangered the safety, rights or interests of the landlord or another resident
- Engaged in illegal activity that has caused or could cause damage to the property, disturbed or threatened the security, safety or physical well-being of another resident, or endangered a lawful right or interest of another resident or the landlord
- Caused major damage to the property or put the landlord's property at considerable risk

## Getting a New Pet Without Written Permission

If the tenancy agreement says that pets aren't allowed and the tenant gets a pet, two things could happen:

1. The landlord may give the tenant a "breach letter" that explains how the agreement has been broken, how much time is allowed to remove the pet and what will happen if the pet is not removed (e.g. eviction)
2. The landlord and tenant may agree to change this term and record it in the agreement

Even if a tenant is allowed to get a pet, the tenancy agreement can include restrictions on the size, kind, and number of pets allowed.

Basically, the outcome in this type of situation depends on whether the pet restriction in the tenancy agreement is either a:

- **Material term:** A term considered so important that the smallest breach of it gives the other party the right to end the agreement
- **Ordinary term:** A term that's not as important, but it must still be followed

If an ordinary term of a tenancy agreement says a tenant can't have pets, the landlord can apply for dispute resolution and ask for an order that the tenant comply with the tenancy agreement. If the tenant fails to comply with the order, the landlord can serve a notice to end the tenancy.

In all situations, the landlord is required to give a notice to end the tenancy in the approved form, but in this case, the landlord has not done so. An application for an Order of Possession for breach of an agreement without giving the tenant notice to end the tenancy is for cases where the parties agreed in writing that the tenancy would end on a specific date, or the tenant has given notice to vacate and fails to do so.

The landlord has not served the tenant with a notice to end the tenancy in the approved form and therefore, the landlord's application is hereby dismissed and the tenancy continues.

### Conclusion

For the reasons set out above, the landlord's application is hereby dismissed and the tenancy continues.

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 28, 2016

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Residential Tenancy Branch