



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes            CNC

### Introduction

This hearing was convened by way of conference call concerning an application made by the tenant seeking an order cancelling a notice to end the tenancy for cause.

The tenant attended the hearing with a Legal Advocate. The landlord also attended with the owner of the rental property, however the owner is not a party to the tenant's application. The tenant, the landlord, and the owner of the rental property each gave affirmed testimony. The parties were given the opportunity to question each other with respect to 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 the 1 Month Notice to End Tenancy for Cause was issued in accordance with the *Residential Tenancy Act*?

### Background and Evidence

**The owner** of the rental property testified that he owns the property and the landlord named in the application for dispute resolution is the manager of the rental property, and the owner's daughter.

This tenancy began on December 1, 2015, is currently on a month-to-month basis, and the tenant still resides in the rental unit. Rent in the amount of \$750.00 per month is payable on the 1<sup>st</sup> day of each month and there are no rental arrears. The landlord collected a security deposit from the tenant in the amount of \$350.00, which was transferred from a tenancy in a different rental unit of the landlord prior to this tenancy commencing. No pet damage deposit was collected by the landlord and the security deposit is still held in trust. A copy of the tenancy agreement has not been provided by either party. The owner testified that the rental unit is a cottage on an acreage that contains 7 other units as well.

The owner further testified that he and the landlord named in the tenant's application personally served the tenant with a 1 Month Notice to End Tenancy for Cause on June 28, 2016. A copy has been provided, which is dated June 28, 2016 and contains an effective date of vacancy of July 31, 2016. The reason for issuing the notice is:

- Non-compliance with an order under the legislation within 30 days after the tenant received the order or the date in the order.

The owner also testified that the parties had been to arbitration on June 20, 2016, and the dispute settled. A copy of the resulting Decision and a copy of an Amended Decision have been provided. The Decision is dated June 20, 2016 and states, in part:

“The parties settled this matter and have agreed that the tenancy shall continue on a month to month basis. I have recorded the settlement agreement pursuant to section 83 (2) and in the context of section 47 (1) (h) of the Act, I Order the following:

- a. When the tenant’s dog is not inside his unit, he shall keep his dog secured and within a secure fence in his yard, and
- b. Otherwise the tenant’s dog must be inside his unit.”

The Amended Decision changes the section from 47 (1) (h) to 47 (1) (l) of the Act, and is dated June 21, 2016. The owner testified that shortly after the June 20, 2016 hearing, the owner could see the dog not secured, and photocopies of photographs have been provided. Also, a worker on the property saw the dog unsecured, and has provided a letter to that effect dated June 24, 2016. The letter states that the writer saw the tenant and the dog walking around the common area on the property, and the dog was on a leash but no one was holding it. The tenant was approximately 10 to 15 feet away from the dog. Also provided is a letter dated June 30, 2016 which the owner testified was written by another tenant on the property. The writer states that on June 29, the writer saw the tenant’s dog walk from the tenant’s rental unit toward another unit unattended and had no leash on, and that the writer has seen the dog a few times at random times the past week.

The owner testified that a partial fence exists, but the dog can go over, under and through it. If tenants want fencing, they are responsible for erecting it, which was agreed upon. Further, the Arbitrator at the June 20, 2016 hearing said it was not the responsibility of the landlord, nor was it part of the agreement.

The owner also testified that the hearing on June 20, 2016 was due to the tenant’s dog attacking a car and frightening people. An error also exists in the June 20, 2016 Decision stating that rent is \$725.00 per month, but it is in fact \$750.00 per month.

**The landlord** testified that on June 28, 2016 the landlord was at the rental property and saw the dog off leash, and the landlord took photographs. The landlord told the tenant that that was not what was agreed to, and the yard is not secure. The notice to end the tenancy was given that day. Chronologically, the Decision was made on June 20, the landlord saw the dog unsecured and off leash on June 28 and the notice to end the tenancy was served, on June 30 the other tenant saw the dog, July 5 the owner saw the dog and took photographs.

On July 20, 2016 there was an altercation between the parties. The tenant had taken building materials from the property belonging to the owner, without the owner’s consent or that of the

landlord. The owner wrote a note to the tenant stating that the tenant did not have permission to use the materials to build a fence and asks that the materials be returned. When the landlord and the owner went to the rental unit to deliver the note, they were met with swearing by the tenant who told them to get out of the yard, to talk to his lawyer, and he was very rude and belligerent. His behaviour scared the landlord. The landlord and the owner took the material that the tenant had removed, and the tenant continued to curse at them. The yard was still insecure at that time.

On July 21, 2016 the landlord went back to the rental unit and a make-shift fence was in place, and the dog was again insecure, which was beyond 30 days after the June 20, 2016 settlement.

The landlord also caused another 1 Month Notice to End Tenancy for Cause to be served on the tenant, a copy of which has been provided. It is dated July 21, 2016 and contains an effective date of vacancy of August 31, 2016. The reason for issuing it is:

- Non-compliance with an order under the legislation within 30 days after the tenant received the order or the date in the order.

By then, 30 days had passed since the June 20, 2016 order. The tenant told the landlord that his Advocate had advised that the tenant had 30 days to comply with the order, but that was not the understanding of the landlord. On July 22, 2016 the landlord again attended the rental unit and the yard was still insecure. The tenant has not served the landlord with an application for dispute resolution disputing the July 21, 2016 notice to end the tenancy.

The landlord has also provided a written statement entitled, "Incident Report," which states that on June 28, 2016 the landlord attended the rental unit, observed the tenant's dog walking in the tenant's yard without a leash, nor was the yard secure. The tenant was not in the yard or in sight.

**The tenant** testified that he had resided in another unit of the landlord previously, and at that time the landlord allowed the tenant to use the fencing material, so he thought it was okay. Then when the tenant was told to return it, he did so. If he had been told prior not to use it, he wouldn't have. The owner removed the rolls of material and the tenant returned the materials he had used to start the project.

After the June 20, 2016 hearing, the tenant went to Home Depot, that day, and purchased new fencing which was erected about July 21. The tenant also bought a 50 foot rope and left the dog tied up on that rope.

The tenant also testified that the neighbouring tenant who wrote the June 30, 2016 letter told the tenant she had been coerced into signing it by the landlord, and that the neighbouring tenant signed the letter under duress.

The tenant further testified that he understood from his Legal Advocate that he had 30 days to comply with the order. Neither the tenant nor his Legal Advocate understood that a fence had

to be put up, and the tenant told the Arbitrator that it was unfair to keep the dog in the house. The tenant didn't believe he had to be on the other end of a leash if the leash was tied up.

On July 20 the tenant bought building material, took down the fencing, and the job was completed by July 21. He stapled wire with nail-type staples to existing posts, and the dog can't get out of the yard. The house is small, and the dog was tied up on 50 feet of rope from June 20 to July 21, 2016. The tenant didn't have the money to erect the fence earlier. However, the tenant ran out of material and had a plastic portion on the fence, but the owner said that wasn't good enough. The tenant bought more material. The tenant also suggests that the photographs provided by the landlord don't show the long rope attached to the dog. The Arbitrator at the June 20, 2016 hearing did not say that the tenant had to have both a rope and a fence, but one or the other.

**The tenant's Legal Advocate submits** that the Arbitrator specifically amended the Decision quoting Section 47 (1) (l) of the *Residential Tenancy Act*, which states:

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

(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.

The tenant received the Decision on June 27, 2016 and received the Amended Decision on June 28, 2016. The first notice to end the tenancy is dated June 28, 2016 and the second one is dated July 21, 2016. In order to be effective, the notice must be served in accordance with the *Act*, and the landlord must comply with Section 47 (1) (l). The tenant's Legal Advocate submits that neither of the notices to end the tenancy given by the landlord were issued within the time frame allowed by the *Act*, being within 30 days of the later of the date the tenant receives the order or the date specified in the order for the tenant to comply. The *Act* affords the tenant 30 days to comply, and the tenant has complied. The soonest the landlord could issue a notice to end the tenancy is July 27, 2016.

The tenant's Legal Advocate also submits that there was no possibility that the tenant could have erected a fence in a day, nor would the tenant have agreed to that.

**The owner gave closing submissions** stating that for \$8.95 the tenant could have bought a leash and kept the dog secure. Further, once an order is made it's effective. There was no intention of the landlord agreeing to provide the tenant with 30 days to comply, nor was it mentioned in the June 20, 2016 hearing. The tenant understood and admitted that. The owner also submits that the Arbitrator's intention was not to wait 30 days before the tenant followed the rules. The tenant admitted he didn't comply with the ruling. The tenant's Legal Advocate makes it sound like the dog can bother people for 30 days after a hearing.

The landlord seeks an Order of Possession.

### Analysis

Where a tenant disputes a notice to end a tenancy given by a landlord, the onus is on the landlord to establish that it was issued in accordance with the *Residential Tenancy Act*, which can include the reasons for issuing it. I have reviewed the 1 Month Notice to End Tenancy for Cause dated June 28, 2016, and I find that it is in the approved form and contains information required by the *Act*. The reason for issuing it is in dispute.

The facts are clear and not in dispute that the June 20, 2016 hearing resulted in a settlement to continue the tenancy on a month-to-month basis, and also states, "I have recorded the settlement agreement pursuant to section 63 (2) and in the context of section 47 (1) (l) of the *Act* ..." Section 47 (1) (l) of the *Act* is set out above, which permits a landlord to end a tenancy if the tenant has not complied with an order of the director within 30 days of the date the tenant receives the order or the date specified in the order. There is no date specified in the order. I accept the submissions of the tenant's Legal Advocate that the tenant had 30 days from the date he received the Amended Decision to put up a fence, but I am not satisfied that the parties agreed that the tenant had 30 days to secure the dog, nor was that the intention of the Arbitrator.

The Amended Decision dated June 21, 2016 specifically states:

- a. When the tenant's dog is not inside his unit, he shall keep his dog secured and within a secure fence in his yard, and
- b. Otherwise the tenant's dog must be inside his unit.

Therefore, the issue before me is whether or not the tenant, starting from the date the parties agreed to the order, being June 20, 2016 to the date the 1 Month Notice to End Tenancy for Cause was issued, kept the dog inside the rental unit or kept the dog secured.

The photographs provided by the landlord are photocopy or faxed copies of photographs and are somewhat difficult to show details. The tenant testified that the dog was always on a 50 foot lease from June 20 to July 21, 2016. The neighbouring tenant provided a letter which states that the writer observed the dog with no leash on June 29, 2016, however the notice to end the tenancy had already been issued the day before. I also consider the letter provided by the landlord's worker who writes that on June 24 he observed the dog in the common area with a leash, but no one was holding the leash, and the tenant was about 10 or 15 feet away from the dog. The landlord's written statement specifies that on June 28 she observed the dog in the tenant's yard without a leash, without being secured and without the tenant in sight. I am certain that if there was a 50 foot rope attached to the dog and some other secure item, the landlord would have observed that.

In the circumstances, I find that the landlord had cause to issue the 1 Month Notice to End Tenancy for Cause, and the tenant's application for an order cancelling it is dismissed.

I hereby grant an Order of Possession in favour of the landlord. Since the effective date of vacancy has passed, I grant the Order of Possession on 2 days notice to the tenant.

Conclusion

For the reasons set out above, the tenant's application is hereby dismissed.

I hereby grant an Order of Possession in favour of the landlord on 2 days notice to the tenant.

This order is final and binding and may be enforced.

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: August 12, 2016

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Residential Tenancy Branch