



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNC, MNDC, OLC, FF

### Introduction

The tenant applies to cancel a one month Notice to End Tenancy for cause dated and received January 14, 2017. She also seeks an order that the landlord put the Hydro utility account into the landlord's name, for compensation for having to attend to collection and payment of Hydro costs in the past and for unstated relief regarding icy stairs and construction in the backyard.

By the time of hearing the landlord had arranged to have the Hydro account for the rental unit put in her name.

Both parties attended the hearing and were given the opportunity to be heard, to present sworn testimony and other evidence, to make submissions, to call witnesses and to question the other. Only documentary evidence that had been traded between the parties was admitted as evidence during the hearing.

### Issue(s) to be Decided

Are there valid grounds for the Notice? Is the tenant entitled to compensation regarding the Hydro account or some other relief regarding icy steps or construction in the yard?

### Background and Evidence

The rental unit is the three bedroom upper portion of a house. There is a ground level rental unit below. The back yard is shared between the upper tenant, the lower tenant and the landlord, who, in the past, has maintained a garden there.

The tenancy started in December 2012. Currently the monthly rent is \$1286.00. The landlord holds a \$625.00 security deposit and a \$400.00 pet damage deposit.

There is a written tenancy agreement between the parties. It includes a "pet agreement" whereunder the tenant is permitted only a certain animal. She has been permitted to keep two small dogs, one of which still lives with her.

Among other things, the pet agreement states that the tenant is to have her dog on a leash "or similar control" anytime the dog is in the yard. It also states that the tenant will pick up the pet's waste immediately from any portion of the residential property. The pet agreement states that any breach of its terms will be considered to be a breach of a material term of the tenancy agreement and may result in the ending of the tenancy.

The landlord testifies that the tenant has, on various occasions since 2014, failed to pick up her dog's waste in the yard. Particularly, in October 2014 the tenant was warned about it, then in October 2014 and in March and December 2015. In January 2017 the landlord, through her brother who was working in the yard, again discovered that the tenant was not "immediately" picking up her dog's droppings and a formal warning was given.

The tenant says that she lets her dog out into the yard in the morning and evening to permit it to defecate. She says she does not pick up the waste during the day. She says in January it accumulated because she had been too ill to go out and clean up.

The tenant complains that the stairs from her balcony to the back yard were icy recently and the landlord did not de-ice or make them safe.

She says that since August there has been construction in the yard caused by the landlord building a garage in the back.

The tenant says that even though the landlord has now put the Hydro into her own name, she spent four years with the Hydro bill in her name and had to collect the other rental unit's 50% share and pay it. She feels she should be compensated.

## Analysis

### The One Month Notice

Under s. 47 of the *Residential Tenancy Act* (the “Act”) a landlord may end a tenancy where 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.

Residential Tenancy Policy Guideline 8, “Unconscionable and Material Terms” provides:

#### **Material Terms**

A material term is a term that the parties both agree is so important that the most trivial breach of that term gives the other party the right to end the agreement.

To determine the materiality of a term during a dispute resolution hearing, the Residential Tenancy Branch will focus upon the importance of the term in the overall scheme of the tenancy agreement, as opposed to the consequences of the breach. It falls to the person relying on the term to present evidence and argument supporting the proposition that the term was a material term.

The question of whether or not a term is material is determined by the facts and circumstances surrounding the creation of the tenancy agreement in question. It is possible that the same term may be material in one agreement and not material in another. Simply because the parties have put in the agreement that one or more terms are material is not decisive. During a dispute resolution proceeding, the Residential Tenancy Branch will look at the true intention of the parties in determining whether or not the clause is material.

As stated at hearing, I find that there has not been a breach of a material term of this tenancy agreement. I hereby cancel the one month Notice to End Tenancy dated January 14, 2017.

The fact that the pet agreement states that its terms are “material terms” is far from conclusive. The tenancy agreement and pet agreement are documents created by the landlord and to which the tenant has had very little opportunity to negotiate.

Although the tenancy agreement/pet agreement is very strict about pets, requiring the tenant to keep her dog leashed or similarly controlled when in the back yard, and although the agreement states that breach of such a term will be a breach of a material term, I find that there has been no such breach.

I consider it extremely unlikely that the parties contemplated that even the most trivial breach of the pet agreement terms referred to, for example the dog occasionally being

off leash or the tenant missing the occasional dog dropping, would result in the ending of the tenancy.

This does not mean that the tenant is not in breach of the pet clause. It means that she is not in breach of a “material term” and so the breach does not warrant eviction under the material breach provision in s. 47 of the *Act*. The landlord is free to pursue the tenant for damages resulting from the breach of the non-material term. For example, if the landlord has to clean the yard of the tenant’s dog’s waste or hire someone to do it, the tenant could be responsible for that cost. As well, in my view, if the tenant continues to ignore the requirements of the pet agreement, an order prohibiting her from keeping a dog might be made.

### The Hydro

I dismiss this portion of the tenant's claim. She has gone four year without complaining about the fact that she had the Hydro in her own name and was collecting 50% of it from either the other tenants or the landlord. It has not been shown that doing so would be any more onerous than having to account the landlord for her 50%, as she will be required to do now that the account is in the landlord’s name. The tenant has failed to demonstrate any loss.

### The Icy Steps

A landlord may be responsible to maintain the common areas of a property but it appears that the steps in question are part of the tenant’s portion of the property. The stairs drop from the balcony; the tenant’s exclusive area, to the common yard. Only she has use of them. In my view it is for her to keep the steps free of snow and ice.

### The Backyard Construction

It is apparent that since September or August the landlord has created a laneway along the side of the house and has constructed a garage in the backyard. Had the tenant been sharing the backyard with only the occupants of the rental unit below, it might be argued that she is losing or suffering the reduction of a facility or amenity.

However, in this case it is clear that the landlord reserved to herself a portion of the backyard. How much of a portion has not been stated. Nor is it clear that the portion taken up by the garage will be larger that the portion the landlord used for her garden.

From the tenant's picture it appears that the lawn in the backyard has been dug up. The landlord evinces the intention of restoring the yard. The tenant has not shown that she suffered any particular loss of use of the yard during this period.

In all the circumstances I dismiss the tenant's for relief related to the garage construction in the back yard.

### Conclusion

The tenant's application to cancel the one month Notice to End Tenancy dated January 14, 2017 is allowed. The remainder of the tenant's claim is dismissed.

As the tenant has been only partially successful, I authorize her to recover \$50.00 of the filing fee. I authorize her to reduce her next rent by \$50.00 in full satisfaction of the fee.

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: February 17, 2017

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Residential Tenancy Branch