



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNC, FF

### Introduction

The Application for Dispute Resolution filed by the Tenant seeks the following:

- a. An order to cancel the one month Notice to End Tenancy dated July 27, 2017 and setting the end of tenancy for August 31, 2017
- b. An order limiting the landlord's right of access to the rental unit.
- c. An order to recover the cost of the filing fee.

A hearing was conducted by conference call in the presence of both parties. On the basis of the solemnly affirmed evidence presented at that hearing, a decision has been reached. All of the evidence was carefully considered.

Both parties were given a full opportunity to present evidence and make submissions. Neither party requested an adjournment or a Summons to Testify. Prior to concluding the hearing both parties acknowledged they had presented all of the relevant evidence that they wished to present.

The tenant filed a number of Amendments and it is difficult to determine what she is seeking. At the start of the hearing I asked the tenant to clarify her claims. She stated she was seeking an order to cancel the one month Notice to End Tenancy, an order to limit the landlord's access to the rental unit and an order to recover the cost of the filing fee. I determined it was appropriate to consider these claims. All other claims raised in the various amendments are dismissed with leave to re-apply.

I find that the one month Notice to End Tenancy was served on the Tenant on the Tenant by posting on July 27, 2017. I find that the Application for Dispute Resolution/Notice of Hearing was sufficiently served on the landlord as the landlord acknowledged service of the documents.

### Issue(s) to be Decided

The issues to be decided are as follows:

- a. Whether the tenant is entitled to an order cancelling the Notice to End Tenancy dated July 27, 2017?
- b. Whether the tenant is entitled to an order limiting the landlord's right of entry to the rental unit?
- c. Whether the tenant is entitled to recover the cost of the filing fee?

### Background and Evidence

The tenancy began on April 15, 2014. The tenancy agreement provided that the tenant(s) would pay rent of \$795 per month payable in advance on the first day of each month. The tenant(s) paid a security deposit of \$375 on March 14, 2014 and a pet damage deposit of \$375 on April 15, 2014

### Grounds for Termination:

The Notice to End Tenancy identifies the following grounds:

- Tenant or a person permitted on the property by the tenant has:
  - ...
    - seriously jeopardized the health or safety or lawful right of another occupant or the landlord
    - put the landlord's property at significant risk
- Tenant has caused extraordinary damage to the unit/site or property/park
- Non-compliance with an order under the legislation within 30 days after the tenant received the order or the date in the order

The landlord seeks to end the tenancy alleging the tenant's cats have caused extraordinary damage and have put the landlord's property at significant risk.

The tenant was authorized to have 1 budgie and 1 cat at the time the tenancy started. She subsequently acquired 5 cats. The landlord served a one month Notice to End Tenancy on the Tenant. On July 29, 2016 an arbitrator granted an Order of Possession but recorded a settlement between the parties where the parties agreed the tenant could have 2 cats, that she was to find a home for the other cats and that the landlord would not exercise their rights under the Order of Possession if the tenant complied with the settlement agreement.

The tenant was able to find a home for 3 of her cats although it may be that the home was not found within 30 days as set out in the settlement.

The landlord gave the following evidence:

- The landlord entered the suite on the following dates and determined there was a strong cat urine smell throughout the suite and stains on the carpets.
  - July 19, 2017 (it was also discovered live wires were exposed)
  - July 21, 2017
  - July 24, 2017
- The carpets are around 25 years old.
- On October 2 an inspection was held and there was still a smell of cat urine.

The tenant and her witness gave the following testimony:

- She had the carpets cleaned after receiving the Notice to End Tenancy at a cost of \$157,
- In October she had the carpets cleaned by Aquamist at a cost of \$268. This cleaning is very effective and there is no longer a cat urine smell.
- The landlord or someone else who has a key is entering into her rental unit without permission and she asked for another lock.
- Tenant's Witness #1 testified she was a manager of a rental property in the past and the tenant is an immaculate house cleaner and she has never smell cat urine in the rental unit.
- Tenant's Witness #2 testified the tenant is a very careful house cleaner and there is no cat urine smell in the rental unit .

Analysis:

After carefully considering all of the evidence I determined the landlord failed to establish sufficient cause to end the tenancy for the following reasons:

- The landlord has the burden of proof to establish sufficient cause to end the tenancy on a balance of probabilities.
- The landlord failed to prove the tenant has put the landlord's property at significant risk or has seriously jeopardized the health and safety of the landlord or other occupants.
- There is a significant disagreement between the testimony of the landlord and the tenant and her witnesses as to the presence of the urine smell. I determined the landlord failed to prove this allegation.
- The landlord failed to present evidence that even if there is a smell of cat urine that this amounts to extraordinary damage. The landlord failed to present

sufficient evidence of the cost to replace the carpets. Further, the carpets are 25 years old and are long past the expected life of a carpet.

- The landlord agreed to the tenant having 2 cats in the settlement of July 29, 2016 and was given an Order of Possession. Even if it took the Tenant longer than 30 days to find new homes for her 3 other cats the landlord failed to take steps to enforce the Order of Possession and the tenancy was reinstated. The landlord cannot now allege the tenant has breached an Order which was made over 14 months ago.

Determination and Orders:

As a result I ordered that the one month Notice to End Tenancy be cancelled. The tenancy shall continue with the rights and obligations of the parties remaining unchanged.

I dismissed the tenant's claim for an order restricting the landlord's right of access to the rental unit as the tenant failed to prove the landlord has breached the obligations under the Act. As a courtesy to the parties I have pasted section 29 of the Residential Tenancy Act which provides as follows:

"Landlord's right to enter rental unit restricted

29 (1) A landlord must not enter a rental unit that is subject to a tenancy agreement for any purpose unless one of the following applies:

- (a) the tenant gives permission at the time of the entry or not more than 30 days before the entry;
- (b) at least 24 hours and not more than 30 days before the entry, the landlord gives the tenant written notice that includes the following information:
  - (i) the purpose for entering, which must be reasonable;
  - (ii) the date and the time of the entry, which must be between 8 a.m. and 9 p.m. unless the tenant otherwise agrees;
- (c) the landlord provides housekeeping or related services under the terms of a written tenancy agreement and the entry is for that purpose and in accordance with those terms;
- (d) the landlord has an order of the director authorizing the entry;
- (e) the tenant has abandoned the rental unit;
- (f) an emergency exists and the entry is necessary to protect life or property.

(2) A landlord may inspect a rental unit monthly in accordance with subsection (1) (b)."

The tenant has been successful with half of her claim. As a result I order the landlord pay to the tenant half of the cost of the filing fee in the sum of \$50 such sum may be deducted from future rent.

Conclusion:

I ordered that the one month Notice to End Tenancy dated July 29, 2017 be cancelled,. I dismissed the tenant's claim to restrict the landlord's right of access to the rental unit. I ordered the landlord pay to the tenant \$50 for half of the cost of the filing fee such sum may be deducted from future rent.

**This decision is final and binding on the parties.**

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: October 18, 2017

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Residential Tenancy Branch