



# 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 and the landlord attended the hearing, and the tenant's daughter attended for support to the tenant, but did not testify or take part in the proceedings. The landlord and the tenant each gave affirmed testimony and were given the opportunity to question each other.

The parties confirmed that evidence had been exchanged prior to the commencement of the hearing. However, the tenant indicated that he was not able to open some of the landlord's digital evidence even with assistance of an employee of Best Buy. The tenant does not have a computer and only the first 6 photographs were visible. The landlord advised that the digital evidence was checked prior to serving the tenant and all evidence was visible. I have reviewed my copy of the USB stick and was able to open each photograph and video. I accept that the landlord provided same to the tenant. No other issues with respect to service or delivery of documents or evidence were raised, and all evidence of the parties has been reviewed and is considered in this Decision.

### Issue(s) to be Decided

Has the landlord established that the One Month Notice to End Tenancy for Cause was issued in accordance with the *Residential Tenancy Act*, specifically with respect to the reasons for issuing it?

### Background and Evidence

**The landlord** testified that this tenancy began as one year fixed term commencing on February 1, 2013 and expiring on January 31, 2014, thereafter reverting to a month-to-month tenancy, and the tenant still resides in the rental unit. Rent in the amount of \$622.22 per month is currently payable on the 1<sup>st</sup> day of each month, having been increased from \$600.00 effective October 1, 2017. The tenant is currently in arrears the sum of \$22.22 for this month, and there are no further arrears. At the outset of the tenancy the landlord collected a security deposit from the tenant in the amount of \$287.50 as well as a pet damage deposit in the amount of \$287.50, both of which are still held in trust by the landlord. The landlord's copy of the tenancy agreement was destroyed in a flood, so a

copy has not been provided as evidence for this hearing. The rental unit is a bachelor suite in the landlord's home.

The landlord further testified that on July 28, 2017 the landlord personally handed to the tenant a One Month Notice to End Tenancy for Cause, and a copy has been provided for this hearing. It is dated July 28, 2017 and contains an effective date of vacancy of August 31, 2017. The reasons for issuing it state:

- Tenant or a person permitted on the property by the tenant has:
  - significantly interfered with or unreasonably disturbed another occupant or the landlord;
  - seriously jeopardized the health or safety or lawful right of another occupant or the landlord;
  - put the landlord's property at significant risk.

On the 17<sup>th</sup> of July, 2017 the tenant's pitt-bull terrier bit the landlord's 7 year old nephew unprovoked. The landlord called police who recommended animal control. The animal control officer interviewed the landlord and the tenant, and did not deem the animal dangerous, but a "liability," meaning the dog could possibly harm others on the property.

The landlord gave the tenant a notice in a letter to remove the dog from the property within one week. The tenant gave the landlord 2 letters agreeing to remove the dog. On July 26, 2017 the dog was removed but the tenant returned with the dog on July 28, 2017, telling the landlord that he did not remember writing the letters and that the dog was staying. The landlord issued the notice to end the tenancy that day. The dog is still on the property; the tenant does not keep the dog indoors, and is not kept on a leash as the tenant indicated in one of the letters.

The tenant has been dismissive about biting the landlord's nephew, who had a cut on his finger, and the tenant said it was minor and enrolled the dog in obedience school. The tenant leaves the gate open and neighbor's children walk by, but despite requests to keep it closed, the tenant blames others. The tenant has no care or control of the dog and the landlord does not believe the tenant has the strength to control the dog. The landlord's family is in jeopardy and the tenant doesn't take it seriously. The landlord has not seen the dog on the road, but chasing cats unattended on the property with the gate left open.

The tenant also accused the landlord of tampering with the tenant's car and told the landlord he would get even. Police were called, who told the landlord to call again if anything else happened. However the tenant keeps a plastic pop bottle containing a sample gasoline on the window sill on a south facing window above a baseboard heat register, being the tenant's way of passive-aggressive behavior.

The tenant also tampered with the hot water tank, turning it up to 135 degrees in September this year. The landlord inspected the rental unit and the panel had been taken off. Video evidence has been provided by the landlord, and the landlord testified that the tenant has admitted to doing so.

The landlord has been to a doctor due to a car accident and feels that as a result of constant fear and anxiety and interruption in the landlord's day-to-day life the notice to end the tenancy was issued. The landlord is anxious, fearful and depressed. The landlord's nieces and nephews are not allowed to visit without their parents present, and a letter from landlord's niece has been provided for this hearing which states, in part, that while visiting the landlord the tenant's dog became "skittish" when the writer's children moved in any way, and started to "growl and bare his teeth." The letter speaks of the dog being extremely curious of children, and the lack of care on the tenant's part, causing the writer to disallow the children to ride their bikes to the landlord's home without adult supervision.

**The tenant** testified that the dog is a pitt-bull, lab cross, and there are no next door neighbors. The rental property is pretty isolated. The child suffered a small wound and no one knows what happened, but the landlord's father, a neighbor, told the tenant that the dog was playing with the child. There was no barking or growling and it sounds like it was an accident.

The dog is 3 years old and the tenant acquired it about a year and a half ago. The dog is well trained and doesn't need a leash. When a car drives by, the dog sits by the tenant's side, and has not been in any trouble since the animal control officer was there, who advised the tenant to keep the dog on a leash when children are around. There are no children around and no playground or place to play. The nearest neighbours are a kilometer away, and the rental property is about 2 acres.

The tenant took the dog away and returned it after receiving legal advice that he did not have to give up the dog.

No one knows who keeps opening the gate, however the tenant does so to train the dog to stay away from it on occasion. Sometimes the tenant isn't aware that the gate is open.

There is no gasoline in the pop bottle; mostly water. That's what came out of the tenant's car which was towed after someone put water in it. The landlord has no idea what's in the pop bottle and never asked to smell it.

The tenant also denies tampering with the hot water tank and testified that it takes some trouble to access it by moving furniture out of the way. The landlord was present when another person on behalf of the landlord turned it down 2 degrees.

The tenant has also had the police attend the rental property twice due to the landlord's harassment. The landlord and family will do whatever they can to remove the tenant.

### 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 given in accordance with the *Residential Tenancy Act*, which can include the reason(s) for issuing it.

I have reviewed the One Month Notice to End Tenancy for Cause and I find that it is in the approved form and contains information required by the *Act*.

I have also reviewed the digital evidence of the landlord and all evidentiary material of both parties. There is absolutely nothing in the videos or photographs that depict a dog that is aggressive, mean or disobedient. The photographs also include one of a child with what appears to be a scratch of about a half inch in length. I am not satisfied that the landlord has established that the dog bit the child out of aggression.

The letter provided by the landlord's niece contains no indication that the dog has been aggressive or mean, but curious. The letter describes a single incident but does not give any indication of when the incident took place.

The digital evidence also contains a video with the pop bottle partly filled with a liquid. The tenant denies that it is gasoline and I am not satisfied that the landlord has established that the tenant has put the landlord's property at significant risk.

With respect to the hot water tank, the person who attended the rental unit with the landlord is heard on the video agreeing that he turned it down "a couple of degrees."

In order to establish that the landlord has complied with the *Act*, the landlord must be able to demonstrate a significant interference or disturbance, or an act of the tenant that seriously jeopardized the health or safety or lawful right of another occupant. I find that the landlord has failed to demonstrate either, and I cancel the notice to end the tenancy.

### Conclusion

For the reasons set out above, the One Month Notice to End Tenancy for Cause dated July 28, 2017 is hereby cancelled 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: October 26, 2017

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Residential Tenancy Branch