



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      CNC, FF

### Introduction

This hearing dealt with the tenants' application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- cancellation of the landlord's 1 Month Notice to End Tenancy for Cause (the "1 Month Notice") pursuant to section 47; and
- authorization to recover the filing fee for this application from the landlord pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses. The co-tenant CB primarily spoke for both tenants (the "tenant").

As both parties were present I confirmed service. The tenant confirmed receipt of the landlord's 1 Month Notice and subsequent evidence package. The landlord confirmed receipt of the tenants' application for dispute resolution and the tenants' evidence. I find that the parties were each served in accordance with sections 88 and 89 of the *Act*.

### Issue(s) to be Decided

Should the 1 Month Notice be cancelled? If not is the landlord entitled to an Order of Possession?

Are the tenants entitled to recover the filing fee for this application from the landlord?

### Background and Evidence

This periodic tenancy began in May, 2015. The current monthly rent is \$1,030.00. A security deposit of \$500.00 was paid at the start of the tenancy. No pet damage deposit was paid during this tenancy.

The parties submitted a copy of the written tenancy agreement into evidence. The agreement does not contain a pet clause prohibiting the tenants from keeping pets or restricting the size or breed of pets. The agreement does not contain a clause preventing the tenants from using the outdoor area of their rental unit to store personal items.

The parties testified that in December, 2015 the tenants, with the knowledge and verbal consent of the landlord, purchased a pet dog. The landlord testified that he agreed at that time to a small dog and the tenants complied by getting a puppy. The landlord said that the dog has now grown to an unmanageable size and therefore the tenants are in breach of a material term of the tenancy agreement prohibiting large dogs.

The landlord also testified that the tenants store some personal items in the outside area of their rental unit and the tenancy agreement does not explicitly allow this.

The tenant testified that they got a dog with the express consent of the landlord in December, 2015. The dog is an Australian shepherd, a medium size breed, who currently weighs approximately 50lbs. The tenant said that the landlord was aware of the dog throughout the tenancy and has not given the tenants any indication that they are in breach of a term of the tenancy agreement prior to the current dispute. The tenant said that they store some personal items in the outdoor area of their rental unit and until recently have not been informed by the landlord that this is an issue. The parties agreed that the landlord has not issued any formal warning letters to the tenants regarding either of these issues.

The landlord testified that should the tenants' application succeed and his 1 Month Notice be cancelled, he intends to issue a 2 Month Notice to End Tenancy for Landlord's Use in the hopes that he can oust the tenants from the rental unit. The landlord further testified that he intends to shut off the utilities such as electricity and water to the rental unit in an attempt to reclaim the property.

### Analysis

Section 46 of the *Act* provides that upon receipt of a notice to end tenancy for cause, the tenant may, within ten days, dispute the notice by filing an application for dispute resolution with the Residential Tenancy Branch. If the tenant files an application to dispute the notice, the landlord bears the burden to prove, on a balance of probabilities, the grounds for the 1 Month Notice.

The landlord must show on a balance of probabilities, which is to say it is more likely than not, that the tenancy should be ended for the reasons identified in the 1 Month Notice. In the present case the landlord submits that the tenants breached a material term of the tenancy agreement by bringing a pet dog onto the property and storing items in the outside area of the rental suite.

Residential Tenancy Policy Guideline 8 defines a material term as a term that is so important that the most trivial breach of that term gives the other party the right to end the agreement. The landlord submits that because the rental agreement does not explicitly permit pets or storage of items outside, the tenants must be in violation of the agreement. I do not find the landlord's submission to be persuasive. When a tenancy agreement does not include a pet clause explicitly prohibiting the keeping of pets or the type of pets that a tenant may keep, I find that this does not constitute a material term. A material term must be explicitly stated. The landlord cannot rely upon the absence of a term in a tenancy agreement that he drafted and provided to the tenant. If restriction on pets or the tenant's use of the area outside on their rental property was to be a material term the landlord ought to have explicitly included that in the written tenancy agreement.

Even if a restriction on pets was a material term of the tenancy agreement the undisputed evidence of the parties is that the tenant acquired their dog with the landlord's knowledge and consent in December, 2015. The tenants have been utilizing the outdoor area of their rental unit to store items throughout the tenancy. There is little evidence that the landlord found this to be a problem until he chose to issue a 1 Month Notice. I find that by his conduct, if there was a material term of the tenancy agreement prohibiting pets or storage, the landlord implicitly waived their right to enforce such a term.

I do not find that individually or cumulatively the tenant's actions have given rise to cause to end this tenancy. I therefore allow the tenants' application to cancel the 1 Month Notice.

As the tenants' application was successful the tenants are entitled to recover the \$100.00 filing fee for this application.

I note parenthetically that the landlord testified that he intends to take steps including issuing a 2 Month Notice to End Tenancy for Landlord's Use and shutting off the utilities to the rental unit to force the tenants to vacate. While I make no finding on events

which have not occurred, the landlord was advised to consult with an Information Officer of the Residential Tenancy Branch or seek independent legal advice.

### Conclusion

The tenants' application to cancel the 1 Month Notice is successful. The 1 Month Notice is of no further force or effect.

The tenants' are issued a monetary award of \$100.00. As this tenancy is continuing the tenants may reduce the next monthly rent amount owed to the landlord by that amount.

In the event that this is not feasible for the tenants, I issue a monetary Order in the tenants' favour in the amount of \$100.00. The tenants are provided with these Orders in the above terms and the landlord must be served with this Order as soon as possible. Should the landlord fail to comply with these Orders, these Orders may be filed in the Small Claims Division of the Provincial Court and enforced as Orders of that Court.

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: November 23, 2017

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Residential Tenancy Branch