



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes: CNC, FFT

### **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 January 24, 2018.
- b. 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.

I find that the one month Notice to End Tenancy was served on the Tenant by mailing, by registered mail to where the Tenant resides on January 24, 2018. Further I find that the Application for Dispute Resolution/Notice of Hearing was sufficiently served on the landlord. With respect to each of the applicant's claims I find as follows:

### **Issues 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 January 24, 2018?
- b. Whether the tenant is entitled to recover the cost of the filing fee?

### **Background and Evidence:**

The tenancy began on September 1, 2015. In August 2016 the lease was assigned to the Tenant. The present rent is \$1573 per month payable in advance on the first day of each month. The landlord holds a security deposit of \$737.

The tenancy agreement includes the following:

- A Smoke Free Housing Addendum clause that provides that the Tenant, occupants, guests shall not smoke anywhere in the residential premises including the balcony.
- A clause excluding pets (including a cat) without the written permission on the landlord.

In both cases the clauses are identified as being a material term and provide that the landlord may end the tenancy on if the breaches are not rectified within a reasonable time after receiving written notice to do so.

The landlord relies on a maintenance report where two officials from the landlord inspected the rental unit on December 20, 2017 and determined the tenant was taking care of a cat and there were cigarette butts in an ashtray on the balcony.

On January 9, 2018 the landlord delivered a breach letter to the Tenant that stated referenced the no pet policy, advised that it had come to their attention that she was housing a cat and advising that this was her first and final warning and stating that if they find evidence of a pet in the future the landlord would end the tenancy.

On January 20, 2018 the landlord's agents conducted a further inspection. The letter indicates they did not find any pets during the inspection. However, the tenant told them she was taking care of a friend's cat while the friend was travelling. The friend had returned but is not stable as she had started a new job. The tenant asked if she could have a pet if she paid a pet damage deposit. The tenant acknowledged she tried to hide the cat in the closet during the fire alarm and suite inspection.

The landlord testified she has done a social media search which shows the tenant with a cat. The background is very similar to the type of apartments which the tenant is presently residing in.

The tenant testified she took care of her friend's cat while she was away. However, the friend had returned prior to the receipt of the January 9, 2018 letter and the cat was returned to her friend. She submits she has corrected the situation and she does not have a pet. The social media photos are old and do not involve this apartment. She denies the smoking.

Grounds for Termination:

The Notice to End Tenancy identifies the following grounds:

- Breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so

Analysis:

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

- The breach letter does not allege the tenant breached the no smoking terms of the Addendum. In any event the landlord failed to prove that the tenant continued to breach the no smoking terms after receiving the breach letter.
- The breach letter refers to the no pet provisions of the tenancy agreement but does not provide a time in which the tenant must rectify the breach.
- The landlord's agent conducted an inspection on January 19, 2018. The letter from the agent indicates they found no evidence of a cat being present.
- 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 there was a continued breach of the no pets provision after the breach letter was given to the tenant.
- I do not accept the submission of the landlord that the conversation between the landlord's agents and the tenant on January 19, 2018 that her friend is not in a stable situation because she has just taken on a new job, her inquiry of whether she could house a pet if she paid a pet deposit and her admission she tried to hide the cat during the inspection is sufficient evidence to prove that the tenant breached the no pet provision after the tenant received the breach letter. .
- The landlord failed to provide sufficient evidence to dispute the tenant's testimony that she returned the cat to her friend prior to receiving the January 9, 2018 letter.
- The social media evidence presented by the landlord is not sufficient to prove the tenant continued to breach the no pet term after the January 9, 2018 letter.

Determination and Orders:

After carefully considering all of the evidence I determined that the landlord has failed to establish sufficient cause to end the tenancy. As a result I ordered that the one month Notice to End Tenancy dated January 24, 2018 be cancelled. The tenancy shall continue with the rights and obligations of the parties remaining unchanged. As the tenant has been successful with this application I ordered that the landlord reimburse

the tenant the cost of the filing fee in the sum of \$100 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: April 11, 2018

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Residential Tenancy Branch