



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding DUNCAN HOUSING SOCIETY  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      OPC, FFL

### Introduction

This is an Application for Dispute Resolution (“Application”) filed by the Landlord for an Order for Possession from a One Month Notice to End Tenancy for Cause dated January 5, 2018.

The Landlord and the Tenant, along with her advocate, appeared for the scheduled hearing. I find that the notice of hearing was properly served and that evidence was submitted by all parties. Although all evidence was taken into consideration at the hearing, only that which was relevant to the issues is considered and discussed in this decision.

The hearing process was explained and parties were given an opportunity to ask any questions about the process. The parties were given a full opportunity to present affirmed evidence, make submissions, and to cross-examine the other party on the relevant evidence provided in this hearing.

### Issue(s) to be Decided

Is the Landlord entitled to an Order for Possession pursuant to sections 47 and 55 of the Residential Tenancy Act (“Act”)?

Is the Landlord entitled to payment of the filing fee of \$100.00, pursuant to section 72 of the Act?

## Background and Evidence

The Tenant has lived at the rental unit since 2013. The Notice to End Tenancy for Cause was delivered to the Tenant in person on January 5, 2018, citing the reason as “breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so”. The Tenant was given a letter dated January 13, 2017 (presumably intended to read “2018”) which states the following:

*“This letter is to notify you that you are in breach of your tenancy agreement under section 47 of the Residential Tenancy Act. The Breach of Tenancy includes:*

- Numerous written notice of breach of tenancy letters in the past regarding your daughter living with you*
- Having a cat in your unit*
- Ongoing smoking of marijuana in your suite*

*Thus the attached Notice to End Tenancy. As stated, you are to vacate unit 345 on or before February 14, 2017.”*

The Tenant applied to dispute the Notice and a hearing was held on March 8, 2018; as a result of a lack of evidence, the Arbitrator dismissed the Tenant’s application and did not award an Order for Possession. As the One Month Notice to End Tenancy was not cancelled, the Landlord has brought this new Application to obtain an Order for Possession.

The Landlord argues that the Tenant has had her daughter’s cat at the rental unit, and claims it is not permitted under the terms of the tenancy agreement. In addition, the Landlord claims that the Tenant’s daughter has been seen staying in the rental unit. The Landlord submitted one page of a tenancy agreement signed by the Tenant in 2013, which contains no restrictions on pets on the premises. The agreement allows other occupants, but none were listed in the document as of 2013.

The Tenant states that her daughter’s cat was transported in a container into the unit and stayed only briefly; the daughter stated that she stayed for about a week while she was relocating and that the cat has not been back in the unit since receiving the eviction notice in January. The Landlord disputes this, and provided a photograph showing a cat on a window sill; it is unclear when the photograph was taken or whether it depicts the Tenant’s rental unit. A March 21<sup>st</sup> written witness statement states that the Tenant’s daughter was at the entrance carrying a cat cage and that she said her moving arrangements had fallen through and she had no where to go.

The Landlord states that there has been a substantial change in staff and management recently, and was not able to provide any further evidence of any written warnings given to the Tenant, but states that there were many; she understood from the Tenant's mental health worker that a mover had been hired and a new location had been found for the Tenant, but the Tenant turned away the mover and claims she knew nothing about those arrangements to move out. She would like to remain in the rental unit and would prefer a main floor suite if that can be arranged. The Landlord states that internal moves are not being authorized because of a bed bug problem in the building, and that they would like this Tenant to vacate the premises.

### Analysis

A Landlord may serve a One Month Notice to End a Tenancy for Cause if a material term of the agreement has been breached, under section 47(1) of the Act which reads, in part:

#### ***Landlord's notice: cause***

**47** (1) *A landlord may end a tenancy by giving notice to end the tenancy if one or more of the following applies:*

*(h) the tenant*

*(i) has failed to comply with a material term, and*

*(ii) has not corrected the situation within a reasonable time after the landlord gives written notice to do so;*

The Landlord has the burden of proving that the Notice is valid and that it meets the requirements. I find that the Notice was served in person and in the proper format required. The effective date is self-corrected to read March 1, 2018. The Tenant disputed the Notice and states she wants the tenancy to continue. I now turn my attention to the validity of the stated reasons:

Policy Guideline 8 of the Residential Tenancy Branch states:

*“ 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.*

*To end a tenancy agreement for breach of a material term the party alleging a breach – whether landlord or tenant – must inform the other party in writing:*

- *that there is a problem;*
- *that they believe the problem is a breach of a material term of the tenancy agreement;*
- *that the problem **must be fixed by a deadline included in the letter**, and that the deadline be reasonable; and*
- *that if the problem is not fixed by the deadline, the party will end the tenancy.*

*Where a party gives written notice ending a tenancy agreement on the basis that the other has breached a material term of the tenancy agreement, and a dispute arises as a result of this action, the party alleging the breach bears the burden of proof. A party might not be found in breach of a material term if unaware of the problem.” (bolding added)*

The initial concern here is that the Landlord has alleged a breach of material terms, but has failed to provide six of the pages of the tenancy agreement, which would indicate whether this Tenant had agreed that no cat would be allowed on the premises, that smoking was not permitted and that guests or other occupants would not be allowed. In the absence of such evidence, the Landlord fails to meet the burden of proving that these were material terms (or even agreed terms) of this tenancy.

Furthermore, the letter dated January 13<sup>th</sup> serves as notification that there had been a breach, but it fails to provide for a reasonable deadline to correct the breach. Instead of

offering reasonable timeline, it simply states that the tenancy is being terminated. The Tenant insists that she is not in breach of the agreement and that no cat is residing in her premises. I find that the Landlord has failed to meet the burden of proof that the cat is in the rental premises and that this was a breach of a material term. I further find that the Landlord has failed to prove that the daughter's presence was a breach of a term of the tenancy agreement. No evidence was led to establish that the Tenant was smoking marijuana in the residence.

The Landlord's Application is dismissed; the request for the filing fee is denied.

### Conclusion

The Landlord's Application is hereby dismissed without leave to reapply.

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: June 4, 2018

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Residential Tenancy Branch