



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding NACEL PROPERTIES LTD  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      Landlord:    OPC   FF  
                                 Tenant:        CNC   FF

### Introduction

This hearing dealt with cross Applications for Dispute Resolution filed by the parties under the *Manufactured Home Park Tenancy Act* (the “Act”).

The Landlord’s Application for Dispute Resolution was made on October 10, 2018 (the “Landlord’s Application”). The Landlord applied for the following relief, pursuant to the *Act*:

- an order of possession based on a One Month Notice to End Tenancy for Cause, dated September 27, 2018 (the “One Month Notice”); and
- an order granting recovery of the filing fee.

The Tenant’s Application for Dispute Resolution was made on October 1, 2018 (the “Tenant’s Application”). The Tenant applied for the following relief, pursuant to the *Act*:

- an order cancelling a cancelling the One Month Notice; and
- an order granting recovery of the filing fee.

The Landlord was represented at the hearing by L.H., an agent. The Tenant was represented at the hearing by her daughter, N.E. Both L.H. and N.E. provided affirmed testimony.

The parties acknowledged receipt of the Application packages and documentary evidence to be relied upon. No issues were raised during the hearing with respect to service or receipt of the Application packages and documentary evidence. I find the parties were sufficiently served with the above documents for the purposes of the *Act*, pursuant to section 71 of the *Act*.

On behalf of the parties, L.H. and N.E. were provided with the opportunity to present evidence orally and in written and documentary form, and to make submissions to me. I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure and to which I was referred. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

### Issues

1. Is the Landlord entitled to an order of possession?
2. Is the Landlord entitled to recover the filing fee?
3. Is the Tenant entitled to an order cancelling a One Month Notice?
4. Is the Tenant entitled to recover the filing fee?

### Background and Evidence

A copy of the tenancy agreement between the parties was submitted into evidence. The tenancy began on January 1, 2013. Currently, rent is due in the amount of \$1,079.00 per month. The Tenant paid a security deposit in the amount of \$475.00, which the Landlord holds. The Tenant did not pay a pet damage deposit.

The Landlord issued the One Month Notice on the basis that the Tenant breached a material term of the tenancy agreement that was not corrected within a reasonable time after being asked to do so. The Tenant's Application confirms receipt of the One Month Notice on September 27, 2018.

On behalf of the Landlord, L.H. testified that the Tenant keeps a dog in the rental unit, contrary to paragraph 18 of the tenancy agreement, which states:

*...the Tenant shall not keep, or allow to be kept, any animals or pets, domestic or wild, furbearing or otherwise, unless specifically permitted in writing by the Landlord, which permissions may be revoked by the Landlord at any time...This is a material condition of the agreement...if the Landlord gives notice to the Tenant to correct any breach, or if the Landlord revokes the permission and the Tenant fails to comply immediately, the Landlord has the right to terminate the tenancy...*

[Reproduced as written.]

In the copy of the tenancy agreement submitted by the Landlord, the Tenant's initials appear in a box beside this term. In the copy of the tenancy agreement submitted by the Tenant, the Tenant's initials do not appear.

In addition, L.H. testified that the Landlord provided the Tenant with a notice dated August 14, 2018, advising the Tenant of the breach of the tenancy agreement (although the notice cited the incorrect paragraph) and that the continued breach could lead to termination of the tenancy. A copy of the notice was submitted into evidence.

In reply, N.E. testified the Tenant's small dog has lived in the apartment for about 5 years. She also testified that other tenants in the building have pets. In support, the Tenant submitted a photograph of an individual other tenant walking two dogs outside the property. The Tenant also submitted a hand-written note from another tenant, K.S., dated September 29, 2018, advising that he has had a small breed of dog in his rental unit since 2010 with no concerns expressed by the Landlord. The Tenant also submitted a copy of a notice to all tenants requesting each tenant's unit number and type of pet by September 30, 2018.

In addition, N.E. testified the Tenant did not receive the notice dated August 14, 2018. On behalf of the Tenant, N.E. advised that ending the tenancy at this time would be a hardship to the Tenant, who provides care for her ailing mother.

### Analysis

Based on all of the above, the evidence and unchallenged testimony, and on a balance of probabilities, I find:

Section 49 of the *Act* sets out the bases for ending a tenancy for cause. In this case, the Landlord testified the One Month Notice was issued on the basis that the Tenant breached a material term of the tenancy agreement.

Policy Guideline #8 provides assistance when determining whether or not a term in a tenancy agreement is a material term. It 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.*

[Reproduced as written.]

After considering the above, I find there is insufficient evidence before me to conclude the Tenant has breached a material term of the tenancy agreement. On behalf of the Tenant, N.E. testified, and I find, that the Tenant has had a dog in the rental unit for five years. On behalf of the Landlord, L.H. acknowledged she does not know precisely when the dog moved into the rental unit but acknowledged she has been aware of the dog for as many as two years. However, despite the strong wording in paragraph 18 of

the tenancy agreement, I find there is insufficient evidence before me that the Landlord took any steps to enforce this provision until August 18, 2018. Accordingly, I dismiss the Landlord's Application and order that the tenancy continue until otherwise ended in accordance with the *Act*.

However, I find it is a term of the tenancy agreement between the Landlord and the Tenant that pets are not permitted in the rental unit. Accordingly, I order the Tenant to comply with this term and remove her dog and any other pets from the rental unit by January 31, 2019. If the Tenant fails to comply with this order, the Landlord is at liberty to issue a notice to end tenancy for cause, pursuant to section 47(1)(l) of the *Act*, and to seek and order of possession.

As I have found the Landlord's Application is dismissed, and the Tenant has breached the tenancy agreement, I decline to award the filing fee to either party.

#### Conclusion

I order that the Landlord's Application is dismissed, without leave to reapply.

I order that the One Month Notice is cancelled. The tenancy will continue until otherwise ended in accordance with the *Act*.

I order the Tenant to comply with the tenancy agreement and remove her dog and any other pets from the rental unit by January 31, 2019. If the Tenant fails to comply with this order, the Landlord is at liberty to issue a notice to end tenancy for cause, pursuant to section 47(1)(l) of the *Act*, and to seek and order of possession.

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 9, 2018

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Residential Tenancy Branch