



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

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

## **DECISION**

Dispute Codes      CNC, FFT, OLC

### Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution filed by the Tenant on October 30, 2018 (the “Application”). The Tenant applied to dispute a One Month Notice to End Tenancy for Cause dated October 29, 2018 (the “Notice”). The Tenant also sought an order that the Landlord comply with the Act, regulation and/or the tenancy agreement. The Tenant sought reimbursement for the filing fee.

The Tenant appeared at the hearing with three witnesses who were outside of the room until required. The Agent for the Landlord (the “Agent”) appeared at the hearing with one witness who was called into the hearing when required.

I asked the Tenant about the request for an order that the Landlord comply with the Act, regulation and/or the tenancy agreement. This request appeared to be the same as the dispute of the Notice and therefore I only considered the dispute of the Notice. The request for an order that the Landlord comply with the Act, regulation and/or the tenancy agreement is dismissed without leave to re-apply.

I explained the hearing process to the parties who did not have questions when asked. The parties and witnesses provided affirmed testimony.

Both parties had submitted evidence prior to the hearing. I addressed service of the hearing package and evidence and no issues arose in this regard.

The parties were given an opportunity to present relevant oral evidence, make relevant submissions and ask relevant questions. I have considered all documentary evidence submitted and all oral testimony of the parties and witnesses. I will only refer to the evidence I find relevant in this decision.

### Issues to be Decided

1. Should the Notice be cancelled?
2. If the Notice is not cancelled, should the Landlord be issued an Order of Possession?
3. Is the Tenant entitled to reimbursement for the filing fee?

### Background and Evidence

A written tenancy agreement was submitted as evidence and the parties agreed it is accurate. It is between the Landlord and Tenant in relation to the rental unit. The tenancy started July 1, 2018 and is for a fixed term ending June 30, 2019. The Tenant paid a \$525.00 security deposit. Under the pet damage deposit section, the “not applicable” box is checked. The agreement is signed by the Agent and Tenant. The agreement has an addendum which includes a section about pets.

The Notice was submitted as evidence. It is addressed to the Tenant and refers to the rental unit. It is signed and dated by the Agent. It has an effective date of November 29, 2018. The grounds for the Notice are as follows:

1. Breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.
2. Security or pet damage deposit was not paid within 30 days as required by the tenancy agreement.

The parties agreed the Agent served both pages of the Notice on the Tenant in person October 29, 2018.

The Agent confirmed both grounds in the Notice relate to the pet damage deposit.

The Agent testified as follows. The Tenant applied for the rental unit and was approved. The application form indicates pets must be approved. The tenancy agreement states that a pet deposit must be received. The tenancy agreement states pets must be approved in writing. The Tenant indicated she would not have a pet. He did not know

the Tenant had a pet. Months later he realised the Tenant did have a pet. He asked the Tenant for a pet deposit and she refused to pay one.

The Agent testified that he attended the rental unit numerous times and observed the pet. He said it did not occur to him that the Tenant had not paid a pet deposit. He said he later realised this and brought it to the Tenant's attention.

The Agent said Ground 1 and the breach of a material term relates to page three, term three in the addendum to the tenancy agreement which states "A pet deposit MUST be paid".

The Agent acknowledged that he did not provide written notice to the Tenant that she was breaching a material term of the tenancy agreement with a timeline to address the issue.

Witness 1 testified that she explained to the Tenant at the outset that there would be a pet damage deposit if she had pets in the rental unit.

The Tenant testified that the Agent knew she had a pet and never requested a pet damage deposit at the start of the tenancy. She said the Agent had met her pet on more than one occasion and never requested a pet damage deposit until October 11, 2018. She said the Agent had told her he had to meet the pet before deciding about a pet damage deposit. She said her daughter was holding the pet and the Agent told them it could not be considered a dog and said he was not concerned about a pet damage deposit. The Tenant testified that she confirmed with the Agent that he was not going to request a pet deposit and he said absolutely not. The Tenant testified that her family and Witness 1 were there at the time of this conversation.

Witness 2 testified that she was present when the Tenant and Agent had a discussion about the pet damage deposit. She testified that the Agent said he was not interested in a pet damage deposit because of the size of the dog.

Witness 3 testified that he had been present in the rental unit when the dog and the Agent were there. He said the Agent never had a problem with the dog.

Witness 4 testified that she was present when the Tenant and Agent had a discussion about the pet damage deposit. She said the Agent laughed about the dog and said it was not a dog because of how tiny and old the dog was. She testified that the Agent said he was not worried about a pet damage deposit.

The Tenant submitted a signed letter from the maintenance person for the rental unit property. The letter states that the dog has always been at the rental unit and that the author is aware that the Agent was aware of the dog residing at the rental unit.

In reply, the Agent testified that the version of events provided by the Tenant and her witnesses is a complete fabrication and that he never said anything of the sort.

### Analysis

The Landlord was permitted to serve the Notice based on the grounds noted pursuant to section 47(1)(a) and 47(1)(h) of the *Residential Tenancy Act* (the "*Act*"). The Tenant had 10 days from receiving the Notice to dispute it under section 47(4) of the *Act*.

There is no issue that the Tenant received the Notice October 29, 2018. Based on our records, I find the Tenant disputed the Notice October 30, 2018, within the time limit set out in section 47(4) of the *Act*.

The Landlord has the onus to prove the grounds for the Notice pursuant to rule 6.6 of the Rules of Procedure. The standard of proof is on a balance of probabilities meaning it is more likely than not that the facts occurred as claimed.

I am not satisfied that the Landlord has established the grounds for the Notice.

Section 20 of the *Act* states:

A landlord must not do any of the following:

...

(c) require a pet damage deposit at any time other than

(i) when the landlord and tenant enter into the tenancy agreement, or

(ii) if the tenant acquires a pet during the term of a tenancy agreement, when the landlord agrees that the tenant may keep the pet on the residential property;

The Tenant testified that the Agent knew she had a pet at the start of the tenancy and that the Agent did not require a pet damage deposit. This is supported by the testimony

of Witness 2, Witness 4 and the signed letter from the maintenance person. The tenancy agreement does state that a pet damage deposit is not applicable. The Agent testified that the version of events as described by the Tenant and her witnesses is a complete fabrication. I am not satisfied that it is. The Tenant's version of events is supported by three other individuals. I found no issue with the reliability or credibility of the Tenant or her witnesses. The only evidence the Agent presented in support of his version of events was Witness 1. Upon considering the evidence presented, I am not satisfied that the Agent did not know the Tenant had a pet at the outset of the tenancy. Nor am I satisfied that the Agent did not waive the requirement for a pet damage deposit at the outset of the tenancy.

Given the above, I am not satisfied the Landlord was permitted to request a pet damage deposit from the Tenant on October 11, 2018, more than three months into the tenancy. I find the Notice invalid as the Landlord cannot end the tenancy based on the Tenant's failure to pay a pet damage deposit that the Landlord was not permitted under the *Act* to request. The Notice is therefore cancelled. The tenancy will continue until ended in accordance with the *Act*.

Given the Tenant was successful in this application, I award her reimbursement for the filing fee pursuant to section 72(1) of the *Act*. Pursuant to section 72(2) of the *Act*, the Tenant is permitted to deduct \$100.00 from one future rent payment as reimbursement for the \$100.00 filing fee.

### Conclusion

The Application is granted. The Notice is cancelled. The tenancy will continue until ended in accordance with the *Act*. I award the Tenant reimbursement for the filing fee. The Tenant is permitted to deduct \$100.00 from one future rent payment as reimbursement for the filing fee.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Act*.

Dated: December 17, 2018

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Residential Tenancy Branch