



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OLC, CNC

### Introduction

This hearing was convened by way of conference call concerning an application made by the tenant seeking an order that the landlord comply with the *Act*, regulation or tenancy agreement, and an amended application seeking an order cancelling a notice to end the tenancy for cause.

The tenant attended the hearing with 2 Advocates and 2 witnesses. The line remained open while the telephone system was monitored for 15 minutes prior to hearing any testimony, and no one for the landlord joined the call. However, an agent for the landlord joined the call with another person assisting 16 minutes after the hearing had commenced.

The landlord's agent and the tenant and 1 of the tenant's witnesses gave independent affirmed testimony, and the parties were given the opportunity to question each other and the witness and to give submissions.

No issues with respect to service or delivery of documents or evidence were raised, and all evidence provided has been reviewed and is considered in this Decision.

### Issue(s) to be Decided

- Has the tenant established that the landlord should be ordered to comply with the *Act*, regulation or tenancy agreement, and more specifically with respect to permission to have a dog?
- Has the landlord established that the notice to end the tenancy was given in accordance with the *Residential Tenancy Act*?

### Background and Evidence

**The landlord's agent** testified that this month-to-month tenancy began on February 1, 2015 and the tenant still resides in the rental unit. Rent in the amount of \$700.00 per month was payable on the 1<sup>st</sup> day of each month, which was raised from time to time and is currently \$750.88 per month and there are no rental arrears. At the outset of the tenancy the landlord collected a security deposit from the tenant in the amount of \$350.00 which is still held in trust by the landlord, and no pet damage deposit was collected. The rental unit is one of 16 townhouse units, and the landlord's agent also resides on the rental property. A copy of the tenancy agreement has been provided as evidence for this hearing.

The landlord's agent further testified that on April 10, 2019 the landlord's agent served the tenant with a One Month Notice to End Tenancy for Cause, by posting it to the door of the rental unit and a copy has been provided for this hearing. It is dated April 10, 2019 and contains an effective date of vacancy of May 10, 2019. The reason for issuing it states: "Breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so." The Details of Cause(s) section states: "Mar 7, 2019 – Tenant given notice of complaint, and breach of terms. Mar 23, 2019 – Notice given regarding pet clause. April 3, 2019 – Notice given; situation not rectified, tenant still has dog."

The owner of the rental unit also owns all of the units within the complex and doesn't allow cats or dogs. The tenancy agreement contains a term prohibiting pets without prior written consent: "18. PETS: Unless specifically permitted in writing in advance by the landlord, the tenant must not keep or allow on the residential property any animal, including a dog, cat, reptile, or any animal, domestic or wild, fur bearing or otherwise. Where the landlord has given his permission in advance in writing, the tenant must ensure that the pet does not disturb any persons on the residential property or neighbouring property, and further the tenant must ensure that no damage occurs to the rental unit or residential property as a result of having or keeping their pet. This is a material term of this Agreement..."

To the best of her knowledge, the landlord's agent is aware of two other tenants who have dogs and they have also been given notices to end their tenancies. The tenant has a dog and was not given written permission from the landlord. The landlord's agent gave a written notice, and the tenant tried to force the landlord's agent to sign permission. The landlord's agent refused and gave the tenant another notice to re-home his dog within 10 days.

**The tenant** testified that his doctor recommended that the tenant get a dog, or a service dog. On August 13, 2018 he asked the resident manager at the time if he could get a

dog, and his answer was, "Certainly, and if you need help with a fence, let me know." The tenant acquired the dog on December 17, 2018. The landlord's agent who attended this hearing was well aware of it, and would use the tenant's printer for tenancy notices and such at the tenant's home, and loved the tenant's dog. The tenant's dog is in training to be a service dog for diabetic alerts, and has a training patch as part of the certification.

The tenant seeks an order that the landlord allow the tenant to keep his dog.

The tenant has also provided a letter from a witness who states that she lived at the rental property for 13 years and pets were always allowed.

**The tenant's witness** has been residing in a rental unit on the rental property for 8 years, and prior to that lived with another fellow on the property, which is when the witness acquired a dog. The witness has had his dog for 13 years, and testified that 9 other tenants have pets. The previous resident manager said it was okay.

The witness also testified that he was present and heard the previous resident manager on speaker phone giving permission to the tenant to have a dog.

### Analysis

Where a tenant disputes a notice to end a tenancy given by a landlord, the onus is on the landlord to establish that it was given in accordance with the *Residential Tenancy Act*, which can include the reason(s) for issuing it. In this case, the reason for issuing it is in dispute.

The landlord's agent testified that 2 other tenants in the rental complex have pets, and that they were given notices to end their tenancies, but the tenant's witness, who has resided on the rental property for 8 years testified that at least 9 tenants have pets, and that he had a pet when he moved in. I find it very difficult to believe that in a 16 unit rental complex, one of which is occupied by the landlord's agent, that the landlord's agent has no knowledge of that.

I have also reviewed the evidentiary material of the parties, and I am satisfied that although not in writing, the tenant was given permission by an agent of the landlord to get a puppy prior to actually obtaining the puppy. I also accept the testimony of the tenant's witness and the testimony of the tenant that verbal permission was given. Therefore, I cannot find that the term in the tenancy agreement is a material term, and I cancel the notice.

With respect to the tenant's application for an order that the landlord comply with the *Act*, regulation or tenancy agreement, the term states that prior written permission is required. Having found that it is not a material term, and having found that verbal permission was given, I order that the permission given is deemed to satisfy the tenancy agreement and that the tenant be permitted to keep the pet, and I order that the tenant ensure that the dog does not interfere with the quiet enjoyment of other residents of the rental complex, and that the tenant refrain from acquiring any more pets without the express consent of the landlord or an agent of the landlord.

### Conclusion

For the reasons set out above, the One Month Notice to End Tenancy for Cause dated April 10, 2019 is hereby cancelled and the tenancy continues.

I hereby order that the tenant be permitted to keep the dog, and I order that the tenant ensure that the dog does not interfere with the quiet enjoyment of other residents of the rental complex, and that the tenant refrain from acquiring any more pets without the express written consent of the landlord or an agent of the landlord.

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: May 25, 2019

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Residential Tenancy Branch