



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNC RP

### Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- cancellation of the landlord's One Month Notice to End Tenancy for Cause (One Month Notice) pursuant to section 47 of the *Act*; and
- an Order for the landlord to make repairs to the rental unit or property, pursuant to section 62 of the *Act*.

Both parties attended the hearing and were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. The landlord was represented by its agent T.K., herein referred to as "the landlord". The tenant attended with the occupant whom he shares the rental unit, A.C.

As both parties were present, service of documents was confirmed. The landlord confirmed receipt of the tenant's application for dispute resolution and evidence, served by Canada Post registered mail. The tenant confirmed receipt of the landlord's evidence served by posting on the tenant's door on April 29, 2019. Based on the undisputed testimonies of the parties, I find that the landlord was served with the tenant's application for dispute resolution in accordance with section 89 of the *Act*, and the evidentiary documents of both parties were sufficiently served for the purposes of this hearing in accordance with section 71(2)(c) of the *Act*.

### Preliminary Issue – Unrelated Claims

The tenant's Application included an unrelated claim for repairs to be made to the rental unit, in addition to the tenant's claim to dispute the landlord's One Month Notice.

Rule 2.3 of the Residential Tenancy Branch Rules of Procedure states that claims made in the application must be related to each other. Arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply.

I find that the above-noted claim is not related to the tenant's Application to cancel the One Month Notice. Therefore, I advised the tenant that only the tenant's Application to dispute the landlord's One Month Notice would be heard and considered at this hearing. I noted that all of the tenant's claims for repair, except for the April 25, 2019 claim pertaining to the tenant's washing machine, were previously dismissed without leave to reapply through a prior Residential Tenancy Branch decision dated January 25, 2019 (file number noted on the cover sheet of this Decision). Therefore, only the tenant's claim pertaining to repairs for the washing machine is dismissed with liberty to reapply, subject to any applicable limits set out in the *Act*.

#### Preliminary Issue - Procedural Matters

I explained to the parties that section 55 of the *Act* requires that when a tenant submits an Application for Dispute Resolution seeking to cancel a notice to end tenancy issued by a landlord I must consider if the landlord is entitled to an order of possession if the tenant's Application is dismissed and the landlord has issued a notice to end tenancy that is compliant with the *Act*.

Further to this, the parties were advised that the standard of proof in a dispute resolution hearing is on a balance of probabilities. Usually the onus to prove the case is on the person making the claim. However, in situations such as in the current matter, where a tenant has applied to cancel a landlord's Notice to End Tenancy, the onus to prove the reasons for ending the tenancy transfers to the landlord as they issued the Notice and are seeking to end the tenancy.

#### Issue(s) to be Decided

Should the landlord's One Month Notice be cancelled? And if not, is the landlord entitled to an Order of Possession?

### Background and Evidence

While I have turned my mind to all the documentary evidence and the testimony presented, not all details of the submissions and arguments are reproduced here. Only the aspects of this matter relevant to my findings and the decision are set out below.

A written tenancy agreement was submitted into evidence providing the following details pertaining to this tenancy:

- This month-to-month tenancy began on February 1, 2016.
- Current monthly rent of \$922.50 is payable on the first of the month.
- The tenant provided a security deposit of \$450.00 at the beginning of the tenancy, which continues to be held by the landlord.

A copy of the One Month Notice dated March 22, 2019, was submitted into evidence by both parties. The One Month Notice states an effective move-out date of April 26, 2019, with the following boxes checked off as the reasons for seeking an end to this tenancy:

*Tenant or a person permitted on the property by the tenant has:*

- *significantly interfered with or unreasonably disturbed another occupant or the landlord.*

*Residential Tenancy Act only: security or pet damage deposit was not paid within 30 days as required by the tenancy agreement.*

The “Details of Cause” section of the notice provides the following additional details pertaining to the reasons for ending the tenancy, as follows:

*found out tenant had dog, requested Pet Deposit Jan 29/2018 to be paid by Feb1 2019 its March 22 2019 not paid.*

The tenant confirmed that he received the One Month Notice served to him by posting on the rental unit door by the landlord on March 22, 2019. On March 27, 2019, the tenant filed an Application for Dispute Resolution to cancel the notice.

In this matter, I find that the landlord has failed to provide the “Details of Cause” on the One Month Notice pertaining to the landlord’s claim that the tenant “significantly interfered with or unreasonably disturbed another occupant or the landlord”. Further to this, the landlord failed to provide the tenant with any evidence in support of this ground

for ending the tenancy until April 29, 2019 – over a month after serving the tenant with the One Month Notice and past the effective vacancy date provided on the Notice. As such, I find that the landlord's failure to exercise due diligence in providing adequate details of cause in relation to this ground, in a timely manner to the tenant, has unfairly prejudiced the tenant's ability to dispute this ground for ending the tenancy. As such, I have dismissed the landlord's claim to end the tenancy on this ground and I have only considered the testimony and evidence provided on the other ground stated on the notice, that being the tenant's failure to pay a pet damage deposit "within 30 days as required by the tenancy agreement".

The landlord explained that she took over as property manager in February 2018, from the previous property manager herein referred to as H.D. The landlord testified that the tenant failed to pay a pet damage deposit upon the landlord discovering that the tenant's owned a dog. The landlord submitted into documentary evidence a letter that she sent to the tenant at the end of January 2019 stating that the landlord had become aware of the pet in the tenant's rental unit in December 2018 and requested that the tenant pay a pet damage deposit of \$450.00 by February 1, 2019.

The tenant testified that they purchased a puppy on May 19, 2017 and that the puppy, now a dog, has resided with them since then. Occupant A.C. testified that when they purchased the pet, they spoke with the property manager at the time, H.D., and asked if they were required to provide a pet damage deposit. Occupant A.C. testified that H.D. told her that they did not need to as the dog was a small breed dog, however they would have if the dog were a bigger breed. Occupant A.C. further testified that a neighbour in another rental unit in the rental property had the same small breed dog and also told them that she did not have to pay a pet damage deposit. The tenant submitted a written statement from this neighbour, confirming this information, in support of Occupant A.C.'s testimony of their conversation.

The landlord submitted into documentary evidence an email from H.D. dated April 5, 2019, stating that the tenant moved into the rental unit with the knowledge that prior consent would be required from the landlord for any pets brought into the residence. The email further stated that "if pets were approved a pet deposit of half a months rent would be required, at that time".

### Analysis

Section 47 of the *Act* provides that upon receipt of a Notice to End Tenancy for Cause the tenant may, within ten days, dispute the notice by filing an Application for Dispute Resolution with the Residential Tenancy Branch.

The tenant was in receipt of the landlord's One Month Notice on March 22, 2019. The tenant filed an application to dispute the notice on March 27, 2019, which is within ten days of receipt of the notice. Therefore, I find that the tenant has applied to dispute the notice within the time limits provided by section 47 of the *Act*.

As set out in the Residential Tenancy Branch Rules of Procedure 6.6 and as I explained to the parties in the hearing, if the tenant files an application to dispute a notice to end tenancy, the landlord bears the burden, on a balance of probabilities, to prove the grounds for the notice and that the notice is on the approved form and compliant with section 52 of the *Act*.

Where one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof has not met the onus to prove their version of events.

In the case before me, the landlord submitted into documentary evidence a copy of an email from the previous property manager H.D. explaining the rules regarding pets at the time the tenant moved into the rental unit. However, occupant A.C. provided first-hand testimony that she spoke with H.D. about the pet and was told a pet damage deposit was not needed since the dog was a small breed. I find that because occupant A.C. provided her testimony first-hand, under oath, and was available to be cross-examined on the testimony by the landlord, I give more weight to this first-hand, affirmed testimony than an email, not provided under oath and not subject to being questioned or cross-examined by the other party. The landlord was at liberty to have scheduled H.D. to attend as a witness at the hearing to provide her first-hand testimony on the matter, but did not do so.

I find the fact that the tenant's pet had been residing in the rental unit from May 2017 to February 2018 as a substantial period of time to have a pet undetected by the previous property manager H.D., and I find this fact to lend support to the tenant's claim that the property manager was aware of their pet and through either express or implied waiver did not require a pet damage deposit.

A new landlord assumes the terms of an existing tenancy agreement, and as such it is incumbent on a new landlord to perform their due diligence as to the existing terms of the tenancy agreement to determine if there are issues to resolve before they assume the tenancy, or negotiate with the tenant new terms or a new tenancy agreement.

In this matter, based on the testimony and evidence presented, on a balance of probabilities, I find that the landlord has failed to provide sufficient evidence to prove the tenant's pet was only recently discovered to be residing in the rental unit by the current property manager and that there was not a waiver of the pet damage deposit provided to the tenant by the previous property manager H.D. As such, I find that the landlord has not proven the ground for issuing the One Month Notice.

Therefore, the tenant's application is successful and the landlord's One Month Notice is cancelled and of no force or effect.

The tenancy will continue until ended in accordance with the *Act*.

### Conclusion

The tenant was successful in his application to dispute the landlord's One Month Notice. I order that the One Month Notice to End Tenancy for Cause dated March 22, 2019 is cancelled and of no force or effect, and this tenancy shall continue until it is ended in accordance with the *Act*.

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 17, 2019

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Residential Tenancy Branch