



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

**Dispute codes** CNC, FF

### **Introduction**

This hearing was convened in response to an application by the tenant filed on April 24, 2019 to cancel a 1 Month Notice to End Tenancy for Cause (the Notice to End / the Notice ) dated April 08, 2019 and the similar Notice issued April 26, 2019, each with effective dates of May 31, 2019. The tenant further seeks recovery of the filing fee.

Both the tenant and the landlord appeared in the conference call hearing and each participated via their submissions and testimony. The parties acknowledged receiving the evidence of the other. The parties were further provided opportunity to mutually resolve this dispute to no avail.

The parties were apprised that for this type of application, the onus is on the landlord to prove the Notice to End was issued for valid and sufficient reasons as stipulated in the Notice to End, and that the reasons must constitute sufficient cause for the Notice to be valid. If found the landlord issued a valid Notice to End I must grant the landlord an Order of Possession.

### **Issue(s) to be decided**

Has the tenant failed to comply with a *material term* of the tenancy agreement?

Has the tenant not corrected the alleged breach within a reasonable time after the landlord gave written notice to do so?

Should the landlord's Notice to End be cancelled? If not is the landlord entitled to an Order of Possession pursuant to Section 55(1) of the Act?

### **Background and evidence**

The undisputed relevant evidence in this matter is as follows. This tenancy began in

September 2016. There is a written tenancy agreement governing this tenancy, which includes a term addressing the keeping of pets – **18. Pets**. I have benefit of a copy of the tenancy agreement, and the parties agree the agreement term clearly states that *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 . . .* of which is the subject of this matter. The landlord claims the term is a *material term*, and alleges the tenant has been breaching, and continues to breach the agreement by the keeping of a dog for the previous 2 years without written permission. The landlord testified that the owner of the residential property more recently decided not to allow pets. On April 08 and 26 of 2019 the landlord gave the tenant a 1 Month Notice to End Tenancy for Cause with the reason for the Notice indicated 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 testified they received verbal permission to keep the dog from a co-manager of the property, however the landlord provided a signed statement from the co-manager that they did not give the tenant verbal permission to keep a dog. The tenant testified there are at least 5 other dogs kept on the residential property without written permission, some for several years and one 7 years, which the landlord did not dispute. The tenant testified the other dogs have been kept for years with the landlord's knowledge, and for considerable time in respect to their own dog, without issue until the owner's more recent thinking toward the pets. The landlord testified they have not known of the tenant's dog existence for the length of time claimed by the tenant. The landlord claims the tenant has been sufficiently notified they must remove the dog and strictly comply with the term in the tenancy agreement or must vacate in accordance with the Notice to End.

### **Analysis**

It must be noted that **Residential Tenancy Policy Guideline 8. Unconscionable and Material Terms** defines a *material term* as *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*. It falls to the person relying on the term, in this case the landlord, to present evidence and argument supporting the proposition that the referenced term is a *material term*, and that the onus of establishing that the tenancy should end for breaching a material terms rests on the landlord.

I find that the tenancy agreement is clear that it forbids the keeping of a dog without prior written permission/approval. I find that by their historical acceptance of at least 5 other dogs in other units on the residential property and for less time in respect to the subject dog, without them all having written approval, the landlord has effectively waived their right to rely on the pets related term of the tenancy agreement purported to be a *material term*.

I find that the landlord has failed to establish that the term of the tenancy agreement, 18. Pets, upon which the landlord relies to end this tenancy is not a term that: *the parties both agreed as so important that the most trivial breach of the term gives the other party the right to end the agreement*. Effectively, I find the landlord has clearly established the tenant may be in breach of a term of the agreement but that they are not in breach of a *material term*; and, as a result, the landlord's Notice to End the tenancy for breach of a *material term* is not valid. Therefore, the landlord's 1 Month Notice to End Tenancy for Cause dated April 08 and 26, 2019 are **cancelled** and of no effect.

As the tenant has been successful in their application I Order that they may reduce the rent payable in a single future month by the equivalent amount of their filing fee for this matter, **\$100.00**

### **Conclusion**

The tenant's application to set aside the landlord's Notice to End **is granted**, and the tenancy continues.

**This Decision is final and binding.**

*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 04, 2019

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Residential Tenancy Branch