



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **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 September 27, 2019 (the "Application"). The Tenant applied to dispute a One Month Notice to End Tenancy for Cause dated September 23, 2019 (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 A.M. to assist. The Tenant called the Witness at the hearing. The Witness was outside the room until required. The Landlord appeared at the hearing.

Pursuant to rule 2.3 of the Rules of Procedure (the "Rules"), I advised the Tenant at the outset that I would consider the dispute of the Notice and dismiss the request for an order that the Landlord comply with the Act, regulation and/or the tenancy agreement as it is not sufficiently related to 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 with leave to re-apply. This does not extend any time limits set out in the *Residential Tenancy Act* (the "Act").

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

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

The parties were given an opportunity to present relevant evidence, make relevant submissions and ask relevant questions. I have considered the documentary evidence pointed to during the hearing and the oral testimony of the parties and Witness. 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. The tenancy started July 01, 2017 and was for a fixed term ending June 30, 2018. The parties agreed the tenancy then became a month-to-month tenancy. The rent was \$500.00 for July 2017, increased to \$1,000.00 per month and then increased to \$2,000.00 per month. Rent is due on the first day of each month.

The Notice was submitted as evidence. The grounds for the Notice are:

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. Tenant has assigned or sublet the rental unit/site without landlord's written consent.

There was no issue that the Notice was posted on the door of the rental unit September 23, 2019 and received by the Tenant the same day.

In relation to the second ground for the Notice, the Landlord said she was not sure if she should check this ground and when questioned about it said it can be disregarded.

In relation to the first ground for the Notice, the Landlord testified that there are two issues. First, the Tenant has four dogs on the property contrary to the tenancy

agreement. Second, the Tenant has allowed roommates to move into the rental unit without the Landlord's permission contrary to the tenancy agreement.

The following terms of the tenancy agreement are relevant:

5. The premise may be used by the Tenant for taking in a boarder upon approval of the landlord.

8. ...Tenant is also allowed to keep her current three dogs on the premise...

13. The Tenant is allowed to have a pet only with the written approval of the Landlord. Current agreement in regards to pets as noted in #8 above.

In relation to the dog issue, the Tenant is permitted to have three dogs. The Landlord testified that the Tenant has a fourth dog on the property all of the time. The Landlord testified that she thought the fourth dog was removed from the property in April, but it is back. The Landlord testified that the Tenant says the dog is her boyfriend's and does not live on the property. The Landlord submitted that there is no such thing as a "guest dog" and that the Tenant is breaching the tenancy agreement.

I asked the Landlord why the terms in the tenancy agreement about pets should be found to be material terms of the tenancy agreement. The Landlord submitted I should find this because the tenancy agreement states the Tenant can have her current three dogs and says the Tenant requires written permission to have pets. The Landlord also submitted that there is no such thing as a "guest dog".

In relation to the roommate issue, the Landlord testified about two roommates which the Tenant allowed to move into the rental unit prior to obtaining permission.

I asked the Landlord why the term in the tenancy agreement about roommates should be found to be a material term of the tenancy agreement. The Landlord submitted I should find this because the rules do not allow for a secondary suite. I understood the Landlord to be referring to city by-laws. The Landlord testified that she was clear with the Tenant about this from day one. The Landlord testified that she was clear that the Tenant was not to create a lease or separate apartment and that this could be a breach of city by-laws which could result in financial loss.

The Tenant admitted the fourth dog is at the rental unit every week day. The Tenant testified that the fourth dog does not live at the rental unit and is her boyfriend's dog. A.M. submitted that the Tenant is allowed to have a "guest dog" as there is nothing in the *Act* or tenancy agreement about this.

The Tenant acknowledged allowing the two roommates referred to by the Landlord to move into the rental unit. The Tenant and A.M. testified that the prior property manager told the Tenant she was only required to provide certain information about the roommates. The Tenant and A.M. took the position that approval was not required as long as the Tenant provided the necessary information and did not hear anything back about the person being denied.

I asked the Tenant if she agreed the relevant terms in the tenancy agreement are materials terms. The Tenant said she did not understand this.

The Witness testified about the fourth dog being his. He also testified about being present when the prior property manager told the Tenant he just needed certain information about prospective roommates and that he would pass it on.

The documentary evidence shows the Landlord sent the Tenant an email and letters about the fourth dog and roommate issues being breaches of the tenancy agreement which would result in an eviction notice.

I note that the Landlord sent the Tenant a "clarification" of tenancy agreement terms November 20, 2017. However, I also note the Tenant did not agree to these.

The Landlord submitted a prior RTB decision between the parties about the roommate issue.

### Analysis

I have not considered the second ground for the Notice given the Landlord's position that it could be disregarded.

The Landlord was permitted to serve the Notice based on the second ground pursuant to section 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 was no issue that the Tenant received the Notice September 23, 2019. The Application was filed September 27, 2019, within the time limit.

The Landlord has the onus to prove the grounds for the Notice pursuant to rule 6.6 of the Rules.

Section 47(1)(h) of the *Act* states:

47 (1) A landlord may end a tenancy by giving notice to end the tenancy if one or more of the following applies...

(h) the tenant

(i) has failed to comply with a material term, and

(ii) has not corrected the situation within a reasonable time after the landlord gives written notice to do so;

Policy Guideline 8 deals with material terms in a tenancy agreement and 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...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...

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...

[emphasis added]

I am not satisfied terms 5, 8 or 13 of the tenancy agreement are material terms for the following reasons.

The tenancy agreement does not state these are material terms.

In relation to terms 8 and 13, the Landlord simply submitted that these are material terms because they are in the tenancy agreement. As is clear from Policy Guideline 8, this alone is not sufficient. The only remaining submission by the Landlord, that there is no such thing as a “guest dog”, is irrelevant to whether terms 8 and 13 are material terms of the tenancy agreement. The Landlord did not provide any compelling testimony, submissions or documentary evidence supporting that terms 8 and 13 are material terms. The Landlord did not explain the importance of the term in the overall scheme of the tenancy agreement or point to documentary evidence in this regard. The Landlord did not testify about the creation of the tenancy agreement or intention of the parties or point to documentary evidence in this regard.

In relation to term 5, the Landlord’s submissions centered around the Tenant creating a secondary suite or lease agreement and the possible consequences of this. I do not find that these submissions explain why term 5 of the tenancy agreement, which relates to the Tenant being permitted to have a boarder with approval, is a material term of the tenancy agreement. Again, the Landlord did not provide any compelling testimony, submissions or documentary evidence supporting that term 5 is a material term. The Landlord did not explain the importance of the term in the overall scheme of the tenancy agreement or point to documentary evidence in this regard. The Landlord did not testify about the creation of the tenancy agreement or intention of the parties or point to documentary evidence in this regard.

The Tenant did not agree or acknowledge that terms 5, 8 and 13 are material terms of the tenancy agreement. The Tenant did not know what this meant.

Upon considering the testimony of the parties and documentary evidence submitted, the Landlord has not satisfied me that terms 5, 8 and 13 are material terms of the tenancy agreement. This is a precondition to finding that the Landlord has grounds to end a

tenancy under section 47(1)(h) of the *Act*. In the absence of a finding that the terms relied on are material terms, the Landlord has failed to prove the grounds for the Notice.

I acknowledge the prior RTB decision from May of 2018. I acknowledge that the arbitrator mentioned the parties complying with any material terms of the tenancy agreement. However, I do not find the arbitrator found the relevant terms to be material terms of the tenancy agreement in the prior decision.

In the circumstances, I am not satisfied the Landlord has established the grounds for the Notice. 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 \$100.00 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 filing fee.

### Conclusion

The Application is granted. The Notice is cancelled. The tenancy will continue until ended in accordance with the *Act*.

The Tenant is awarded reimbursement for the \$100.00 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 12, 2019

---

Residential Tenancy Branch