



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNC, FF

### Introduction

On February 7, 2020 the Tenants submitted an Application for Dispute Resolution under the *Residential Tenancy Act* (“the Act”) seeking to cancel a One Month Notice to End Tenancy for Cause dated January 28, 2020 (“the One Month Notice”).

The matter was scheduled as a teleconference hearing. The Landlord and Tenant Mr. M.L. appeared at the hearing. The Landlord was assisted by an interpreter/ agent. The hearing process was explained, and the participants were asked if they had any questions. Both parties provided affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form and make submissions to me.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

### Issue to be Decided

- Does the Landlord have sufficient cause to end the tenancy?

### Background and Evidence

Both parties testified that the tenancy began on July 20, 2018, as a one-year fixed term tenancy that continued thereafter on a month to month basis. Rent in the amount of \$2,400.00 is due to be paid to the Landlord each month. The Tenants paid the Landlord a security deposit of \$1,200.00.

The Landlord served the One Month Notice to the Tenant by mail sent on January 28, 2020. The Notice has an effective date (the date the Tenant must move out) of March 19, 2019.

The Landlord selected the following reason for ending the tenancy within the One Month Notice:

*Breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written Notice to do so.*

In the One Month Notice, the Landlord provided the details of cause as follows:

*No-Pet is agreed in the tenancy agreement. Tenant got a dog in the summer of 2019 without permission. On December 15, 2019 the Landlord served a warning letter asking to have the pet removed from the property by January 2, 2020. The Tenants did not rectify the breach.*

The One Month Notice provides information for Tenants who receive the Notice. The Notice provides that a Tenant has the right to dispute the Notice within 10 days after receiving it by filing an Application for Dispute Resolution at the Residential Tenancy Branch.

The Tenants disputed the One Month Notice on February 7, 2020, within the required time period.

At the start of the hearing the Landlord's agent testified that the Tenants breached the no pet policy and the Landlord wants to end the tenancy. The Landlord's agent stated that the Tenants said they don't have a pet and the Landlord wrote "No Pet" on the tenancy agreement.

The Landlord testified that the Tenants introduced a dog into the tenancy after nine months into the tenancy. The Landlord issued a breach letter to the Tenants asking them to comply with the no pet policy.

The Landlord provided a copy of a text message received on November 24, 2019 from a Tenant which indicates that the Tenants got a dog in the summer.

The Landlord provided a copy of a text message she received from an occupant who lives in a rental unit below the Tenants. The occupant complained that the dog upstairs makes her roommate's allergies worse and the dog is disruptive with very loud barking and whining whenever the Tenants leave.

The Landlord provided a copy of a breach letter dated December 15, 2019 that was served to the Tenants. The letter reminds the Tenants that pets are prohibited on the property and requests that the Tenants take immediate steps to rectify the breach. The letter states that if the pet is not removed by January 2, 2020 the Landlord will serve notice to terminate the tenancy.

In response, the Tenant testified that they do have a dog living in the rental unit and that they intend to keep the dog. The Tenant testified that there is no term in the tenancy agreement that prohibits them from having a pet. The Tenant testified that there is no mention in the tenancy agreement that they need permission to get a pet.

The Tenant testified that the Tenants have not breached a material term of the tenancy agreement.

### Analysis

Residential Tenancy Branch Policy Guideline # 28 Pet Clauses is intended to help the parties to an application understand issues that are likely to be relevant. The Guideline provides:

*When a landlord feels that a tenant is breaching a pets clause by having an animal on the premises, it is not uncommon for the landlord to give the tenant a written notice to get rid of the pet. If the tenant fails to do so within a reasonable time, the landlord might give the tenant a notice to end the tenancy claiming that the tenant has breached a material term of the tenancy agreement and failed to rectify the breach within a reasonable time after being given written notice to do so. If a tenant chooses to dispute the landlord's notice to end the tenancy, the matter will come before an arbitrator who will determine, in the case of a notice to end the tenancy, whether the pets clause in the tenancy agreement is a "material term" of the tenancy agreement.*

*The question of whether or not a pets clause is a material term of the tenancy agreement will depend upon what the parties intended to be the consequence of a breach of the clause. The tenancy agreement itself may designate the pets clause to be a "material term". While that is an important indication, it is not always conclusive. Generally speaking, if the wording of a pets clause captures even trivial breaches which a reasonable person wouldn't expect would justify ending a tenancy, the pets clause may be found not to be a material term by an arbitrator*

*It is important to note that whether or not there is a pets clause in a tenancy agreement, if a pet causes extraordinary damage, unreasonably disturbs the enjoyment of other occupants of the property or threatens the safety or other*

*lawful rights or interests of the landlord or other occupants, the tenant might be given a notice to end the tenancy.*

Based on the evidence and testimony of the Landlord and Tenant before me, I make the following findings:

I find that the Act permits the Landlord to end a tenancy if the Landlord gives notice to the Tenant to correct a breach and the Tenant fails to comply with rectifying the breach within a reasonable amount of time.

I have reviewed the tenancy agreement. I find that part 4 (b) of the tenancy agreement indicates that a pet damage deposit is not applicable. The agreement contains the Landlords' notation of "No Pet". There are no other terms prohibiting pets present.

I have considered whether or not there is a material term of the tenancy agreement that prohibits pets. I find that the tenancy agreement does not contain a term that states there is a no pet policy. I find that the Landlords' notation "No Pet" could mean that the Tenants do not have a pet, rather than pets are not permitted on the rental property. I find that the tenancy agreement is not sufficiently clear that there is a term prohibiting pets and that a breach of that term is material breach that gives the Landlord the right to end the tenancy agreement. A term of a tenancy agreement is not enforceable if the term is not expressed in a manner that clearly communicates the rights and obligations under it.

I find that the Tenants did not breach a material term of the tenancy agreement regarding pets.

While the Landlord provided evidence that the presence of the dog is disrupting the quiet enjoyment of another occupant, the Landlord did not include that reason within the One Month Notice to End Tenancy for Cause, so that evidence is not relevant to the sufficiency of the Notice.

The Tenants' application to cancel the One Month Notice to End Tenancy for Cause dated January 28, 2020 is successful. The One Month Notice is set aside.

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

Section 72 of the Act gives me authority to order the repayment of a fee for an application for dispute resolution. As the Tenants were successful with their application, I order the Landlord to repay the \$100.00 fee that the Tenants paid to make application

for dispute resolution. I authorize the Tenants to withhold \$100.00 from one (1) future rent payment.

Conclusion

The Landlord provided insufficient evidence to establish that the Tenants breached a material term of the tenancy agreement regarding pets.

The Tenants' application to cancel the One Month Notice to End Tenancy for Cause dated January 28, 2020 is successful. The One Month Notice is set aside.

The tenancy will continue until 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: March 09, 2020

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Residential Tenancy Branch