



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding CASCADIA APARTMENT RENTALS  
LTD and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      CNC, FFT

### Introduction

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

- cancellation of the landlord's 1 Month Notice to End Tenancy for Cause, dated November 22, 2019 ("1 Month Notice"), pursuant to section 47; and
- authorization to recover the filing fee for this application, pursuant to section 72.

The first hearing on January 24, 2020 lasted approximately 76 minutes and was adjourned for a continuation. The second hearing on March 31, 2020 lasted approximately 15 minutes and was adjourned because landlord EM could not attend the hearing, due to the covid-19 pandemic and state of emergency. The third hearing on July 16, 2020 lasted approximately 44 minutes. The three hearings lasted a total of approximately 135 minutes.

"Tenant JB" did not attend any of the three hearings. The landlord's agent, "landlord EM" attended the first and third hearings only. The landlord's agent, landlord AK ("landlord"), and tenant PW ("tenant") attended all three hearings. At all three hearings both parties were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

At the first hearing, landlord EM confirmed that she was the general manager and the landlord was the resident manager, both employed by the landlord company named in this application. Both landlord agents confirmed that they had permission to represent the landlord company. At the first and third hearings, the tenant confirmed that she had permission to represent tenant JB (collectively "tenants").

At the first and third hearings, the landlord confirmed receipt of the tenants' application for dispute resolution hearing package and the tenant confirmed receipt of the landlord's evidence package. In accordance with sections 88, 89 and 90 of the *Act*, I find that the landlord was duly served with the tenants' application and the tenants were duly served with the landlord's evidence package.

At the second and third hearings, both parties confirmed receipt of my first interim decision, dated January 24, 2020, and my second interim decision, dated March 31, 2020.

At the second and third hearings, I confirmed receipt of the landlord's original evidence package, including numerous digital evidence files, which was uploaded to the RTB website in accordance with my instructions in the first interim decision of January 24, 2020. At the second and third hearings, the tenant confirmed that she was already in possession of the above landlord's original evidence.

At the second and third hearings, the tenant confirmed that the tenants did not serve any responsive evidence to the landlord's original evidence package, as I permitted them to do so in my first interim decision of January 24, 2020. At the third hearing, landlord EM confirmed that no further evidence was submitted by the landlord.

At the first and third hearings, the tenant confirmed personal receipt of the landlord's 1 Month Notice on November 22, 2019. The landlord confirmed service on the above date using the above method. In accordance with section 88 of the *Act*, I find that both tenants were duly served with the landlord's 1 Month Notice on November 22, 2019.

### Issues to be Decided

Should the landlord's 1 Month Notice be cancelled? If not, is the landlord entitled to an order of possession?

Are the tenants entitled to recover the filing fee for this application from the landlord?

### Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of both parties at the first and third hearings, not all details of the respective submissions and arguments are reproduced here. The relevant and important aspects of the tenants' claims and my findings are set out below.

Both parties agreed to the following facts. This tenancy began on October 1, 2012. Monthly rent in the current amount of \$1,455.00 is payable on the first day of each month. A security deposit of \$625.00 was paid by the tenants and the landlord continues to retain this deposit. A written tenancy agreement was signed by both parties. The tenants continue to reside in the rental unit.

A copy of the 1 Month Notice was provided. Both parties agreed that the effective move-out date on the notice is December 31, 2019. Both parties agreed that the landlord cited the following reasons for the issuance of the notice:

- *Tenant or a person permitted on the property by the tenant has:*
  - *significantly interfered with or unreasonably disturbed another occupant or the landlord;*
  - *seriously jeopardized the health or safety or lawful right of another occupant or the landlord;*
  - *put the landlord's property at significant risk.*
- *Tenant or a person permitted on the property by the tenant has engaged in illegal activity that has, or is likely to:*
  - *adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant;*
  - *jeopardize a lawful right or interest of another occupant or the landlord.*
- *Breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.*

At the first hearing, the landlord testified regarding the following facts. There is no proof of illegal activity, criminal charges or convictions, regarding the tenants. The tenants breached a "material term" of the tenancy agreement at section 18, pages 11 to 12. The tenants have pets at the rental unit without the landlord's permission, that are causing a nuisance to other occupants at the rental property. The tenants keep acquiring more pets and although they have gotten rid of some pets, they continue to keep other pets. The tenants were given written warnings by the landlord beginning on October 5, 2016 regarding the cat; on January 31, 2017 regarding a dog; and on May 3 and 31, 2019, regarding a dog, bird and gecko. The tenants were given 16 days on July 12, 2019 to comply with the material conditions of paying a pet damage deposit and getting rid of pets in excess of the two cats; a breach notice was given on July 16, 2019 and on August 2, 2019, regarding having four cats. An inspection of the rental unit was done by the landlord on July 29, 2019, and on August 2, 2019, a breach letter was given to the tenant for pets being off leash and unsupervised. On August 12, 2019, another inspection was done by the landlord and the tenants got rid of their bird and lizard but

still had other pets. There was a verbal agreement with the previous resident manager for the tenants to have two cats, but the additional two cats, along with the lizard and the bird, violated this agreement. The tenants' pets have caused dog and cat feces outside, where other occupants step on the feces and have complained to the landlord, the tenants' cat tries to sit on another occupant's chair, and the tenant's dog bit another occupant. The landlord's staff had to step in and clean the tenants' pet feces, which is gross. Nothing was done by the landlord between 2018 and 2019, except for a verbal conversation with the tenant sometime in 2018, regarding the tenants' pets.

At the third hearing, landlord EM testified regarding the following facts. The landlord conducts regular inspections of rental units, but they are not every month. The tenants are not permitted to have pets at the rental property, as per the written tenancy agreement. The landlord's groundskeeper, who only speaks Spanish and not English, did not approve for the tenants to have pets, as per his letter. The tenants have tried to hide their pets, have continued to bring more pets in, the pets are "pooping, biting" and sitting on other people's vehicles, and their dogs are unleashed. Other occupants have complained to the landlord, as per their letters, have asked the landlord to take action, and want to move out but cannot due to the covid-19 pandemic. The landlord has taken photographs of the tenants' pets and denies that the neighbouring buildings allow pets in their buildings that come over to the rental property. The tenant uses an outdoor plug, which causes a fire hazard in rain, to heat her cats. The landlord "could have evicted the tenant a long time ago but chose to work with her" but the tenant continued to bring in more pets and cannot keep them indoors, as required. Another unit in the same rental building has an indoor cat and is permitted to do so because the occupant has abided by the landlord's conditions. The manager never brought this occupant's cat to the landlord's attention and a warning letter was given to the occupant in August 2019 to keep the cat indoors, which has been complied with.

At the third hearing, the tenant testified regarding the following facts. She was told by the landlord's groundskeeper, who speaks English, that it was acceptable to have pets at the rental property even if they were not 100% "inside pets" and they were indoor/outdoor pets. The tenant brought two cats with her when she moved in, one that is 15 years old and one that is 8 years old, both of which mainly reside indoors, but one which is also outdoors. The tenant acquired a dog during her tenancy, which is 7 years old, that mainly stays inside but is on a leash outside. The tenant has got rid of extra cats, her bird and her lizard, as per the landlord's instructions. The landlord harasses and blames the tenant for all the pet problems, when it is not her pets causing issues. The tenant cleans the dog and cat feces, her child picked up the dog feces and did not put it on anyone's car, there is another dog in the complex that bit the occupant that the

landlord complained of, and the tenant is being blamed for other people's animals in the complex, as the photographs submitted by the landlord are not her pets. The landlord has allowed other occupants at the rental building to have pets, including cats and dogs and fish in an aquarium. The rental building is between two other buildings, as the tenant's sister-in-law and friend lives in the neighbouring building, which allows pets. The cats and dogs from the other building come over to the rental building and the tenant gets blamed for their behaviour, when it is not her pets.

### Analysis

In accordance with section 47(4) of the *Act*, the tenants must file their application for dispute resolution within ten days of receiving the 1 Month Notice. In this case, the tenants received the 1 Month Notice on November 22, 2019 and applied to dispute it on November 30, 2019. Accordingly, the tenants filed within the ten-day time limit under the *Act*. Where tenants apply to dispute a 1 Month Notice within the required time limit, the onus is on the landlord to prove, on a balance of probabilities, the grounds on which the 1 Month Notice is based.

On a balance of probabilities and for the reasons stated below, I find that the landlord failed to show that it issued the 1 Month Notice for valid reasons.

I find that the landlord failed to provide sufficient evidence of any illegal activity by the tenant, as the landlord conceded there was no proof of any charges, convictions or illegal activity by the tenants. These portions of the 1 Month Notice are dismissed without leave to reapply.

I find that the landlord failed to provide sufficient evidence that the tenants significantly interfered with, unreasonably disturbed, seriously jeopardized the health, safety or lawful right of other occupants or the landlord or put the landlord's property at significant risk. I find that the landlord's main complaints about the tenants' dog and cats relate to feces and that it was a nuisance for the landlord's staff to clean and for other occupants to step on the feces. I find that these complaints are trivial and do not meet the above criteria. I find that the landlord was unable to provide sufficient evidence that it was the tenant's dog that bit another occupant, rather than another dog in the area.

I find that the landlord failed to show that the above complaints were related only to the tenant's pets, rather than other pets at the same rental building or neighbouring buildings. Accordingly, these portions of the 1 Month Notice are dismissed without leave to reapply.

A material term is defined, in part, in Residential Tenancy Policy Guideline 8 (my emphasis added):

*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. It is possible that the **same term may be material in one agreement and not material in another.** **Simply because the parties have put in the agreement that one or more terms are material is not decisive.** 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.***

In the Supreme Court of B.C. case of *Al Stober Construction Ltd. v. Long* (“Long”), the landlord failed to act when it was aware of the tenant’s pet. The Court held that the landlord did not apply the “no pets” policy uniformly and therefore it was not considered a material breach.

The *Long* case involved a tenant who began his tenancy in June 1990 and the landlord served him with a notice to end tenancy in November 2000 for having a cat, contrary to the landlord’s “no pet policy.” The Court dismissed the landlord’s petition for judicial review, finding that the Arbitrator’s decision was not patently unreasonable such that interference could be made with that Arbitrator’s decision.

The Court noted that the Arbitrator accepted the tenant’s independent witness’ testimony regarding a number of other cats in the rental building. At paragraph 35, the Court held:

*On the evidence before him, Arbitrator Covell concluded that the landlord had not consistently or uniformly enforced the “no pet rule”. Although he did not spell out the reasoning that lack of uniform enforcement indicated that the term was therefore not material, it is implicit in his decision. This approach was not clearly*

*irrational or such as to demand intervention by the court. If the term was "fundamental" to the agreement, the landlord would have rigorously enforced it. The arbitrator found as a matter of fact that it had not been enforced. The landlord has not persuaded me that the arbitrator's decision was patently unreasonable. Indeed, I would also find that it meets the standard of reasonableness simpliciter.*

In this case, I find that the landlord's no pet policy is not a material term of this tenant's tenancy agreement. I find that the landlord's no pet policy is not being enforced in the rest of the rental building. Landlord EM agreed that another unit in the same rental building has a cat, that the landlord was not aware of from the beginning of that tenancy, that the manager had not brought the cat to the landlord's attention, and that the cat had been allowed to stay, despite complaints about it being outside. The landlord claimed that because the occupant told the landlord about the cat, after the fact, and kept the cat indoors, there was an exception. The tenant claimed that there were other occupants at the rental property who have cats and dogs, who roam freely and defecate outside.

By failing to uniformly enforce the no pet policy, I find that the landlord did not intend the policy to be a material term of the tenancy agreement. Otherwise, the landlord would have rigorously enforced this policy with the tenants and all other occupants in the same rental building. I find that the landlord waived their right to enforce the no pet policy by allowing the tenants to have their dog and two cats, with no enforcement and by failing to uniformly enforce the policy with all other occupants in the same rental building. The tenants have had the two cats since the beginning of their tenancy in 2012, and although the dog was acquired during the tenancy, the landlord failed to take action regarding the pets until 2016, four years later. Since 2016, complaints were made by the landlord in 2017 and 2019, years later and inconsistently. I find that the landlord failed to show how this term as material to the tenants' tenancy agreement. Simply because it was included in a written tenancy agreement signed by the tenants, does not mean it is material, as noted above.

If the breach of this term was so material, the landlord should have immediately notified the tenant of the breach and the consequences of such breach being the removal of all of the tenant's pets at the beginning of the tenancy in 2012. Landlord EM indicated that they "could have evicted the tenant a long time ago but chose to work with her." No 1 Month Notice was issued by the landlord to the tenants until November 2019, seven years after the tenant first acquired her two cats in 2012. Further, the tenant was given

16 days to comply, in July 2019, with getting rid of additional pets, which she did when she got rid of two additional cats, a lizard and a bird.

For the reasons stated above and on a balance of probabilities, I find that the landlord did not provide sufficient evidence to demonstrate that the tenants have failed to comply with a material term and have not corrected the situation within a reasonable time after the landlord gave written notice to do so.

The tenant's application to cancel the landlords' 1 Month Notice, dated November 22, 2019, is allowed. The landlord is not entitled to an order of possession. The landlord's 1 Month Notice, dated November 22, 2019, is cancelled and of no force or effect. This tenancy continues until it is ended in accordance with the *Act*. The tenants are permitted to reside in the rental unit with their one dog and two cats, that currently reside there, for the remainder of this tenancy.

As the tenants were successful in this application, I find that they are entitled to recover the \$100.00 filing fee from the landlord.

### Conclusion

The tenants' application to cancel the landlord's 1 Month Notice, dated November 22, 2019, is allowed. The landlord is not entitled to an order of possession. The landlord's 1 Month Notice, dated November 22, 2019, is cancelled and of no force or effect. This tenancy continues until it is ended in accordance with the *Act*.

The tenants are permitted to reside in the rental unit with their one dog and two cats, that currently reside there, for the remainder of this tenancy.

The tenants are entitled to deduct \$100.00 from a future rent payment payable to the landlord for this tenancy at the rental unit, in full satisfaction of the monetary award for the filing fee for this application.

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: July 16, 2020