



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      CNC

### Introduction

This hearing dealt with the tenant's application pursuant to section 47 of the *Residential Tenancy Act* (the "Act") to cancel a 1 Month Notice to End Tenancy for Cause (the "1 Month Notice").

Both parties attended the hearing and were given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses.

As both parties were present service was confirmed. The parties each testified they have received the materials. Based on the testimonies I find each party was duly served with the respective materials in accordance with sections 88 and 89 of the *Act*.

### Issue(s) to be Decided

Should the 1 Month Notice be cancelled? 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 of the parties, not all details of the respective submissions and arguments are reproduced here. The principal aspects of the claim and my findings around each are set out below.

This periodic tenancy began in November 2019. While the written tenancy agreement signed by the parties does not set a limit on the number of pets in the rental suite, the original online advertisement states "1 SMALL pet allowed". The landlord submits that there was a discussion and agreement with the tenant that they may keep 2 dogs. The landlord submitted into documentary evidence the correspondence between the parties

discussing the issue. The tenant submits that there was a verbal agreement that in addition to the 2 dogs the tenant was permitted to keep 2 cats in the rental unit.

The landlord testified that they were first informed that the tenant was keeping 2 cats in addition to the agreed upon dogs on June 9, 2020 in a conversation with another occupant of the rental building. The landlord issued an email to the tenant on June 10, 2020 stating in part:

It was brought to my attention on Tuesday, June 9, 2020 that you have 2 cats in your suite which I was not aware of. This is a breach of our tenancy agreement. Please consider this a warning and remove the cats from the property immediately.

The landlord submits that the tenant did not rectify the issue and they subsequently issued a 1 Month Notice dated June 27, 2020. The tenant testified that the cats have been removed from the rental unit on June 29, 2020 and they sent written correspondence to the landlord confirming that the issue has been rectified on that date. The landlord testified that they have no evidence that the issue has been rectified and disbelieve the tenant's submissions.

### 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. If the tenant files an application to dispute the notice, the landlord bears the burden to prove, on a balance of probabilities, the grounds for the 1 Month Notice.

The landlord must show on a balance of probabilities, which is to say it is more likely than not, that the tenancy should be ended for the reasons identified in the 1 Month Notice. In the matter at hand the landlords must demonstrate that there is a breach of a material term of the tenancy that was not corrected within a reasonable period of time after a written warning was issued.

Residential Tenancy Policy Guideline 8 defines a material term as a term of an agreement that is so important that the most trivial breach of that term gives the other party the right to end the agreement. Whether a term in an agreement is material is determined by the facts and circumstances of the tenancy agreement. To end a tenancy for a breach of a material term the party alleging the breach must inform the

other party in writing that there is problem believed to be a material breach, that the problem must be fixed by a reasonable deadline, and if the problem is not fixed the party will end the tenancy.

I find, on a balance of probabilities, that the landlord has not established cause for ending this tenancy. While a limit on the number of occupants or pets in a rental unit may be a material term of a tenancy agreement, in the present case the written tenancy agreement is silent on the issue. The only reference to a limitation on the number or type of pets allowed is found in the online advertisement which states, "1 SMALL pet". The parties agree that they negotiated and allowed 2 dogs to be kept in the rental unit. I find that a term of a tenancy agreement that is not found in the signed agreement and that is negotiable is not a material term. In the absence of documentary evidence showing that the parties agreed to the limit on the number of pets I find insufficient basis to determine that it is a term of the tenancy agreement at all much less a material term.

Furthermore, if this were a term of the agreement which was breached, I find there is insufficient evidence to show that the breach was not corrected in a reasonable time after written notice. The landlord issued correspondence on June 10, 2020 and the tenant submits that the issue was corrected on June 29, 2020. The landlord did not provide a timeframe in their letter of warning to the tenant beyond using the adverb, immediately. I find insufficient evidence that the tenant did not rectify the issue within a reasonable time frame. While the landlord submits that they disbelieve the tenant, the onus is on a landlord to establish on a balance of probabilities that there is a breach and refutation is insufficient to meet their evidentiary onus.

I do not find that there is sufficient evidence to support the landlord's position that the tenancy agreement has been breached and not corrected within a reasonable amount of time. Consequently, I allow the tenant's application and dismiss the 1 Month Notice.

Conclusion

The tenant's application to cancel the 1 Month Notice is allowed. The Notice is of no continuing force or effect. This tenancy continues 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: August 14, 2020

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Residential Tenancy Branch