



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding Vancouver Management Ltd. and  
[tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      CNC

### Introduction

This hearing was convened as a result of the Tenants' Application for Dispute Resolution ("Application") under the *Residential Tenancy Act* ("Act") to cancel a One Month Notice to End Tenancy for Cause dated August 25, 2020 ("One Month Notice").

The Tenant, T.Z., and her two daughters, Z.S. and C.S., and two agents for the Landlord, V.S. and T.D. ("Agents"), appeared at the teleconference hearing and gave affirmed testimony. The Landlord, T.Z., said that her English is not very good, therefore, her daughters took turns translating for her in the hearing.

I explained the hearing process to the Parties, and gave them an opportunity to ask questions about the hearing process. During the hearing, the Tenants and the Agents were given the opportunity to provide their evidence orally and to respond to the testimony of the other Party. I reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch ("RTB") Rules of Procedure ("Rules"); however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Neither Party raised any concerns regarding the service of the Application for Dispute Resolution or the documentary evidence. Both Parties said they had received the Application and/or the documentary evidence from the other Party and had reviewed it prior to the hearing. I note that the Tenants confirmed that they did not submit any documentary evidence for my consideration and to serve on the Landlord.

### Preliminary and Procedural Matters

The Tenants provided the Parties' email addresses in the Application, and the Parties confirmed these addresses in the hearing. They also confirmed their understanding that

the Decision would be emailed to both Parties and any Orders sent to the appropriate Party.

Section 55 of the Act states that if a tenant's application to cancel a notice to end tenancy is dismissed, and I am satisfied that the notice to end tenancy complies with the requirements under section 52, I must grant the landlord an order of possession.

### Issue(s) to be Decided

- Should the One Month Notice be cancelled or confirmed?
- Is the Landlord entitled to an Order of Possession?

### Background and Evidence

The Parties agreed that the periodic tenancy began on September 12, 2017, with a monthly rent of \$660.00, due on the first day of each month. The Parties agreed that the Tenants paid the Landlord a security deposit of \$330.00, and no pet damage deposit.

The Agents submitted a copy of the tenancy agreement for this tenancy, which includes the following clause:

#### **12. Security Deposit and Pet Damage Deposit**

...

(c) If the landlord agrees to allow the tenant to acquire a pet during the tenancy, the tenant will pay a pet damage deposit in an amount set by the landlord, but not to exceed one-half of the monthly rent payable for the residential property when the pet is acquired.

The One Month Notice was signed and dated August 25, 2020, it has the rental unit address, and it was served via registered mail on August 25, 2020. The grounds checked on the One Month Notice are (i) that the Tenants or a person permitted on the property by the Tenants have significantly interfered with or unreasonably disturbed another occupant or the landlord; and (ii) the security or pet damage deposit was not paid within 30 days, as required by the tenancy agreement; and (iii) and the Tenants have breached a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so. The evidence presented for these grounds interconnects to some degree in the testimony and submissions noted below; however the three grounds are addressed respectively in the Analysis section.

The Agent said:

This issue started in December 2019, when [the Tenant] obtained a dog and hadn't paid the pet deposit. When we've asked for it, she claimed the dog is a service animal. We asked for documentation for this, but we had not received it.

We also found out they obtained another dog in the unit. That's against the Strata Bylaws. We informed them that they have to remove one of the dogs, because we received a warning letter from the Strata, as we are in contravention of the Bylaws.

In addition, the dogs are noisy, and the [Tenants] are unable to control the dogs. They started attacking other tenants in the building. And at the end now, it resulted in quite a bit of . . . it's been a little bit ugly, because now we have [the Tenant] and her daughters harassing other people.

We have tried communicating with them for a long time. We met with the Tenants to resolve this issue, but it seems like it doesn't have any – it doesn't end - and it's getting worse and worse. The Strata Managers are coming after us. They are not happy with this situation. Occupants in the building are being affected by this. When we investigated this, there are a lot of issues.

The Agent submitted copies of correspondence from other tenants of the residential property, including the following email excerpt they received from another tenant:

Also, my neighbor in [Tenants' rental unit number] has 2 small dogs. They have been barking loudly in the hallway, and while waiting for the elevator etc. Unfortunately, these dogs are able to wake me up from a sleep or a nap which I may be taking during the day. The owner has no control over these dogs. While they are barking, she may tell them to be quiet or shut up, but they keep right on barking. So she makes no further effort to control them. They need to be trained to obey simple commands in my opinion. It's a simple thing. It would help stop the barking inside their apt. as well. Even at midnight they will just take out the dogs and let them bark. I have spoken to them but to no avail. They are definitely interfering with my right to quiet enjoyment of these premises. There are other tenants who would like this to stop as well. Perhaps you could have a word with them. Thanks.

The Agent submitted a letter dated December 13, 2019, that the Landlord sent to the

Tenants, which includes the following:

To date, we still have not received a pet deposit from you. **The amount outstanding for your deposit is \$330.00.** As per your Tenancy Agreement, no pet can reside in a unit without a pet deposit. Please be advised that this is considered a material breach of The Residential Tenancy Agreement.

If you do not comply with the Tenancy Agreement and do not pay the pet deposit immediately, we will have no other alternative but to **proceed with a Notice to End Your Tenancy as this is your second warning.**

Also, we remind you that you agreed to the material terms of the Strata Bylaws by not having more than one dog in the unit.

[reproduced as written]

The tenancy agreement, submitted by the Landlord, contains an addendum drafted pursuant to the *Strata Property Act*, and the Schedule of Standard Bylaws contained in that Act. This addendum is identified as: "Form K, NOTICE OF TENANT'S RESPONSIBILITIES", and it was signed by the Tenant on September 12, 2017. The contents of this Form K include:

1. Under the *Strata Property Act*, a tenant in a strata corporation **must** comply with the bylaws and rules of the strata corporation that are in force from time to time (current bylaws and rules attached).

The Agents submitted a copy of a letter dated January 14, 2020, that they received from the Strata, which included:

The Residents  
[Tenants' address]

Dear Resident (s),

**RE: Notice of Bylaw Infraction – Multiple Dogs**

We are writing to you on behalf of the Strata Council for **Strata Plan EPS**  
[Strata plan number].

Our office has received complaints from other residents at the building that

there are noisy behaviour from your unit, specifically barking from dogs. We believe you might be operating a multiple dogs daycare within the unit which is in violation of the strata bylaws.

Date: Ongoing

Time: Ongoing

Place: Within the Unit

Details of Infraction: Operation as a multiple dogs daycare

Please see below as a reminder of the strata corporation bylaws that you are in contravention of:

(7) An owner, tenant, occupant or visitor is not permitted to keep any other pets on a strata lot other than one or more of the following:

(a) a reasonable number of fish or other small aquarium animals in a tank no bigger than 5 gallons or 20 litres,

(b) a reasonable number of small caged mammals,

(c ) one dog or one cat.

Council has instructed [realty company] to inform you to comply with the Bylaw.

If you wish to answer the complaint, hold a hearing in person or if there is anything else you feel the Strata Council should consider in respect of the complaint, please respond in writing within twenty-on (21) days of the date of this letter to [the realty company].

. . .

The Strata Council contacted the Tenants again in a letter dated July 13, 2020. This letter again said that complaints had been received about the dogs, and it quoted Strata Bylaw 2.9 (1), (4), and (7), which addresses a tenant or occupant keeping a dog..., and how to comply with the Strata Bylaws. The letter also states: "Council has instructed [realty company] to inform you to comply with the Bylaw."

On February 25, 2020, the Agent emailed the Tenant to say:

Please be advised that the documents you gave us at the meeting on January 27<sup>th</sup>, 2020 do not prove that the dog is recognized as a guide/service animal by the province of BC. In order to waive the pet deposit, please provide us with an

official certificate issued under the Guide Dog and Guide Service Act as prescribed below, no later than March 15<sup>th</sup>, 2020.

. . .

You can find more information here: [URL for government website]

Also, we have received more complaints about the dog's noisy behaviour – barking loudly in common areas in the building and during quiet hours. Please take actions and made sure your dog's noisy behaviour will not affect the quiet enjoyment of other occupants in the building.

Thank you for your cooperation in this matter.

If you have any questions, please do not hesitate to contact me.

The Agents submitted a letter they received from other tenants dated July 23, 2020. This letter states:

To whom it may concern

This is a matter concerning the tenant in [Tenants' rental unit address]. The dogs she owns have been barking and fighting in the hallways for a very long time. She has been warned and spoken to by [the Landlord], but these warning go unheeded. The noise from the dogs is very loud and disturbing, especially while waiting for an elevator, etc. The owner has no command over the dogs, they are untrained, and do not obey the owner. So some resolution is needed. We are entitled to peaceful quiet enjoyment of our premises, but this is not possible with this owners lack of concern or ability to control her dogs. Perhaps the dogs need to be muzzled while in public spaces, or evicted. Please do something.

Respectfully yours,

[signatures and unit numbers of four other tenants]

During the hearing, the Tenant said:

First thing, everyone is biased in their own way: a perfect human mistake. But [the Agents] are simply not telling the truth to make it seem like they are the innocent people. The evidence is not there, but take into account the tone about how they're speaking: it is full of malice; and there's no problem, no solution, no

will to come to resolution. Many times, I and my Mom have called and [T.D.] hung up on me and my Mom, as well. It's very serious to do this to a vulnerable family. We called multiple times and they said you're harassing us and to call RTB. Things were getting serious. My Mom wanted to take responsibility as a law-abiding tenant. The first one is a certified service dog. They asked for the certificate, we provided her with all that information.

The Agents submitted a copy of the certificate that the Tenants provided to them about the dogs in question. The certificate states:

**Service Dogs Canada**  
This document recognizes  
**Boris**  
has been accepted by SDC  
as a Service Dog  
Lifetime Member  
[www.servicedogscanada.org](http://www.servicedogscanada.org)

The Tenants advised that Boris is their first dog, who they claim to be a Service Dog.

Service Dogs Canada ("SDC") does not seem to be associated with the federal or provincial governments, although they quote excerpts from Ontario Human Rights documents. On the home page, it states:

There is NO legal requirement for a Service Dog to be trained by a Professional Trainer in order to have 'public access' rights. For some reason, Service Dog organizations profess that ONLY dogs professionally trained have public access rights.

Further, according to their website, this organization charges \$35.00 for a Service Dog Certificate, \$35.00 for a Service Dog Wallet Card and up to \$250.00 for a service dog identification package.

The SDC site states:

A person with a disability has the right to train his or her own Service Dog, either with the help of a trainer or without. Once the following two requirements are met (owner has a disability and dog is trained to assist the person) the owner and the

service dog may not be denied access to any public facility. With your dog wearing a service dog vest you will always be welcomed.

The bases or authority for these claims are is not clear from the SDC website.

In contrast, the British Columbia *Guide Dog and Service Dog Act* and Regulation govern the law of guide and service dogs in British Columbia This website

<https://www2.gov.bc.ca/gov/content/justice/human-rights/guide-and-service-dog>

states:

British Columbia's *Guide Dog and Service Dog Act* and Regulation govern how guide and service dogs and their handlers are certified. Certification increases public safety, raises training standards, and improves public access for dog and handler teams.

There are two ways to be certified:

1. Receive a trained dog from an accredited school
2. Pass a public safety test

Training and testing ensure only dogs who behave well in a variety of environments are certified.

[emphasis added]

In answer to a question about their dogs' Certification as a Service Dog, the Tenant said:

You need to fully understand. People do not understand the law and they make up their own laws. That's what happened. Where did he find the HR non compliance? Boris the service dog is certified under Service Dog Canada. He's able to go on airplanes, in malls, he has everything. Everywhere in Canada he is accepted including BC. The issue is that they require a service or guide dog certificate. This is a catch in the Federal law; it's a big issue. If you look into this . . . in the *Canadian Human Rights [Act]*. it is stated that nobody can ask for anyone's disability. Boris is my sister's service dog. In BC, I voluntarily can make Boris a service dog.

He is a certified service dog in Canada. But BC is part of Canada. In BC, it is forced to accept Boris as a service dog, but in BC I have the option to choose with the Canadian Human Rights behind me. I can make him a guide dog in BC.



There is an error... he's accepted in other provinces. BC is forced to accept it . . . because the *Canadian Human Rights [Act]*. That is the problem here. They spoke to the BC Human Rights Tribunal who confirmed this in terms and the Justice Institute of BC, where you get your pet certified as a guide dog. This is very important.

When asked about their second dog, the Tenant said:

If they recognized Boris as a service dog, the other dog can be brought in to the picture. If Boris is a service dog, he is exempt. The other dog is a service dog-in-training.

They can ask for a pet deposit, but only if they accept Boris as a service dog. I have the *Canadian Human Rights Act* – section 191 says people with disabilities who use service animals with service related needs.. . also section 10 of the Code. This is where people are trying to trick us. That's why a Human Rights complaint has been filed. They're not recognizing Boris as a Service Dog.

I note that the Tenant kept referring to the Canadian Human Rights Code, when it is actually called the *Canadian Human Rights Act*. Further, this Act has no section 191; and section 10 is about discriminatory practices of an employer or employee organization, rather than having anything to do with Service Dogs.

In response to the Strata complaints, the Tenant said:

We would like you to take into account that the building, the Landlords should have explained this to you. This is a building, a 14-story building. 12, 13 and 14 belongs to a housing society, so from 11 – 7 it's mental health [related]. Below that is turnover for young Chinese families. That's an overview of the building.

[The Agents] associates with the mental health people. These people are 99% of the time are under the influence of drugs. We have an important evidence where a tenant from the mental health said [the Agent's] name. She was calling us dyke and a gypsy. We have evidence of all this. She's also sending private text messages to [J.] the security person. These are private text messages that are completely unprofessional. You step outside – you go downstairs and there will be people who are not even here mentally.

These are the people who are complaining about us. This person who said dyke

and gypsy, this person one week after this incident, we filed a police report. This person went up to my mother and said 'let's forget what happened, okay'.

In response to a question about complains about the dogs' behaviour, the Tenant said:

I can assure you that both of the dogs are here one meter away from the phone. I'm saying an example that they are quiet and well behaved. You can ask [L.] who comes in the elevator – no sound from the dogs. What evidence does she have or are they simply pursuing this out of malice, or because we don't buy cigarettes?

The Agent said:

As I mentioned, there have been several complaints. Same floor tenants – see the letter dated July 23, signed by four tenants. And eight tenants are living on the floor, so a majority of the tenants signed this letter

There have been complaints from other floors as well as the security guards. There were several incidents in the past few weeks with the RCMP. See report from the security company. We tried to resolve this and warned the Tenants several times. We asked them to make sure the dogs obey them. They leave the dogs running in the hallway without a leash. Other tenants have the right to quiet enjoyment. Everything is in the evidence package, which was served to the Tenant in a timely

The Tenant said: "One correction, there are six people not eight residing on this floor, including ours. In the building more than 20 dogs residing. Some units have 2 – 3 dogs."

### Analysis

Based on the documentary evidence and the testimony provided during the hearing, and on a balance of probabilities, I find the following.

### **UNREASONABLE DISTURBANCE**

Section 28 of the Act sets out a tenant's right to quiet enjoyment of the rental unit, and states that tenants are entitled to "reasonable privacy, freedom from unreasonable disturbance, exclusive possession of the rental unit, subject only the landlord's right to

enter the rental unit in accordance with section 29, and use of the common areas for reasonable and lawful purposes, free from significant interference.”

Landlords are obliged by the Act to protect all tenants’ right to quiet enjoyment of their units. I find from the evidence before me that other tenants in the residential property have been negatively affected by the presence of the Tenants’ dogs in the rental unit. The main problem appears to be excessive barking that may happen at any time, day or night.

The Tenants’ response to complaints from neighbours in the hearing was to label them as having mental health issues, and implying that they are less deserving of a right to quiet enjoyment of their units. Further, when the Landlord said that there are eight units on the same floor as that of the Tenants, the Tenant corrected him, saying there are only six units in all. As such, the letter of complaint signed by neighbours in four different units on the Tenants’ floor equates to 67% of the floor neighbours wanting something done about the dogs, rather than the 50% that the Landlord said was the case.

Based on all the evidence before me overall, I find on a balance of probabilities that the dogs have significantly interfered with and unreasonably disturbed other occupants in the residential property in an ongoing basis. As a result, I find that the One Month Notice is valid, and I reject the Tenants’ Application to cancel it.

### **PET DEPOSIT NOT PAID WITHIN 30 DAYS**

I find that it is more likely than not that the dogs are not “Service Dogs” as defined in British Columbia’s *Guide Dog and Service Dog Act* and regulation. I find there is insufficient evidence before me that the Tenants’ dogs have passed the required certification process of (i) having come from an accredited school, or (ii) having passed a public safety test. I find that in order for a dog to be certified a Service Dog in British Columbia, the dogs must meet one of these criteria. As a result, I find that dogs are pets, and not Service Dogs, and therefore, I find that they fall within the rules set out in the tenancy agreement and in the Strata Bylaws regarding tenants’ pets in the building.

The tenancy agreement requires a pet damage deposit to be paid by the tenants when the pet is acquired. Further, section 47(1)(a) states:

#### **Landlord’s notice: cause**

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

- (a) the tenant does not pay the security deposit or pet damage deposit within 30 days of the date it is required to be paid under the tenancy agreement.

As a result, I find that this is another valid ground on which to base the One Month Notice. I dismiss the Tenants' Application and confirm the One Month Notice on this basis, as well.

### **MATERIAL TERM**

Section 47 of the Act states that a landlord may end a tenancy if:

...

- (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;

Further, RTB Policy Guideline 8 states:

#### **Material Terms**

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.

To end a tenancy agreement for breach of a material term the party alleging a breach – whether landlord or tenant – must inform the other party in writing:

- that there is a problem;
- that they believe the problem is a breach of a material term of the tenancy agreement;
- that the problem must be fixed by a deadline included in the letter, and that the deadline be reasonable; and
- that if the problem is not fixed by the deadline, the party will end the tenancy.

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. A party might not be found in breach of a material term if unaware of the problem.

I note that the tenancy agreement and the Strata Form K that the Tenant signed do not identify which clauses are material terms. Further, I find that there is insufficient evidence before me that the Parties both agreed that the clauses or terms relating to pets were material in nature. Accordingly, I find it is more likely than not in this set of circumstances that the terms and Strata Bylaws relating to pets are not material terms. As such, I find that this ground for the One Month Notice fails.

However, as only one valid ground under the Act is required to end a tenancy, and I have found two valid grounds, I dismiss the Tenants' Application and I find that the One Month Notice is confirmed as valid and enforceable. I also find that the One Month Notice is consistent with section 52 of the Act, as to form and content.

As such, I find that the Landlord is eligible for an Order of Possession, pursuant to section 55 of the Act. As the effective vacancy date in the One Month Notice has passed, I find that the Tenants are overholding in the rental unit; and therefore, the Order of Possession is effective **two days after service of this Order** on the Tenants.

### Conclusion

The Tenants' Application to cancel the One Month Notice is unsuccessful. I found that the Landlord provided sufficient evidence to support the validity of the One Month

Notice to End Tenancy for Cause.

Pursuant to section 55 of the Act, I grant an Order of Possession to the Landlord effective **two days after service of this Order** on the Tenants. The Landlord is provided with this Order in the above terms and the Tenants must be served with **this Order** as soon as possible.

Should the Tenants fail to comply with this Order, this Order may be filed in the Supreme Court of British Columbia and enforced as an Order of that Court.

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: November 06, 2020

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Residential Tenancy Branch