



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNC, FFT / OPC, FFL

### Introduction

On October 5, 2020, the Tenants submitted an Application for Dispute Resolution under the *Residential Tenancy Act* (the “Act”) to cancel a One Month Notice to End Tenancy for Cause, and to be compensated for the cost of the filing fee.

On October 6, 2020, the Landlord submitted an Application for Dispute Resolution under the Act. The Landlord requested an Order of Possession, and to be compensated for the cost of the filing fee. The Landlord’s Application was crossed with the Tenants’ Application and the matter was set for a participatory hearing via conference call.

The Landlord and the Tenants attended the hearing and provided affirmed testimony. They were provided the opportunity to present their relevant oral, written and documentary evidence and to make submissions at the hearing. The parties testified that they exchanged the documentary evidence that I have before me.

### Issues to be Decided

Should the One Month Notice to End Tenancy for Cause, dated September 23, 2020 (the “One Month Notice”) be cancelled, in accordance with section 47 of the Act?

If the One Month Notice is not cancelled, should the Landlord receive an Order of Possession, in accordance with section 55 of the Act?

Should the Tenants be compensated for the cost of the filing fee, in accordance with section 72 of the Act?

Should the Landlord be compensated for the cost of the filing fee, in accordance with section 72 of the Act?

## Background and Evidence

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.

Both parties agreed to the following terms of the tenancy:

The two-year, fixed-term tenancy began on July 15, 2019. The monthly rent is \$2,000.00. The Landlord collected and still holds a security deposit in the amount of \$1,000.00 and a pet damage deposit in the amount of \$1,000.00.

The Landlord submitted a copy of the addendum to the Tenancy Agreement and pointed out clause #5 which stated:

*5. Tenants will abide by the Bylaws, Rules and Regulations of the strata and will pay any bylaw fines and/or penalties as a result of any infractions. Pets must be registered with the strata through the landlord.*

The Landlord submitted a copy of the Strata Bylaws and pointed out clause #5.3 which stated:

*5.3 A resident must not keep a pet on a strata lot other than one or more of the following: limiting any resident to one dog or one cat at any time.*

And clause #5.13 which stated:

*A resident contravening any of bylaws 5.1 to 5.7 (inclusive) ...will be subject to a \$200.00 fine.*

The Landlord testified that she was aware that the Tenants had one cat which was registered with the strata. The Landlord stated that she learned of a second cat in the rental unit on July 28, 2020, after a contractor, who was conducting an inspection in the rental unit, reported, via email, that there were two cats in the rental unit.

The Landlord submitted a copy of a letter, dated July 29, 2020, where she warned the Tenants of the breach and provided the date of August 31, 2020 to “rehome” the second pet. The letter also stated that any fines incurred as a result of additional animals will be the responsibility of the Tenants.

The Landlord testified that the Tenants emailed a response and in return, the Landlord sent a letter, dated September 1, 2020, where she warned the Tenants of a material breach and “if multiple animals remain, there will be a 30-day notice to end tenancy given...”

The Landlord submitted a copy of the One Month Notice that was issued to the Tenants on September 23, 2020. The Landlord personally served the Tenants with the One Month Notice which included an effective date of October 31, 2020 and the reason for the end of tenancy being a breach of a material term.

The Landlord testified that the Tenants still have two cats, contrary to the Tenancy Agreement and the Strata Bylaws, and has requested an Order of Possession for the rental unit.

The Tenants testified that they only had one cat, which they registered with the Strata at the beginning of the tenancy, and then adopted a second one. The Tenants stated that the Landlord became aware of the second cat in September 2019 and didn't seem to have any concerns.

The Tenants stated that they were surprised that the Landlord was requesting the Tenants to remove the second cat, in the letter of July 29, 2020.

The Tenants testified that there are other tenants in the Strata that have more than one pet and that they have never received any fines from the Strata for having more than one registered pet.

### Analysis

All parties agreed that the Landlord, on September 23, 2020, served the One Month Notice on the Tenants based on Section 47(1)(h) of the Act. This section states that the Tenants have failed to comply with a material term, and have not corrected the situation within a reasonable time after the Landlord gives written notice to do so.

The *Residential Tenancy Branch Policy Guideline #8* describes a material term as 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, I will focus upon the importance of the term in the overall scheme of the tenancy agreement. In this case, it falls to the Landlord, who is relying on the term, to present evidence and argument supporting the proposition that the term was a material term and that the Tenants breached the 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.

The Landlord submitted a copy of the Tenancy Agreement and the Strata Bylaws; both documents refer to terms regarding the guidelines and restrictions concerning pets. The consequences for breaching these terms are explicit and the Strata Bylaws specifies that a breach may result in a \$200.00 fine. I note that neither of these documents refer to an end of tenancy for a breach of the terms.

I accept the testimony from both parties that the Strata is not involved with this issue of multiple cats, and that neither party has received any fines from the Strata.

I find that a term in the Tenancy Agreement that is not explicitly noted as material and secondly, where a breach of such a term has an imposed remedy (a monetary fine), rather than an end of tenancy, is not a material term.

Upon review of the testimony and evidence, I find, on a balance of probabilities, that the Landlord has not established that a breach of the pet clause is a material term and therefore, not a cause for ending this tenancy. As such, I find the One Month Notice invalid. I find that the Landlord has been unsuccessful in their application for an Order of Possession and I dismiss the Landlord's Application for Dispute Resolution without leave to reapply.

Based on the above, I find the Tenants have been successful with their Application for Dispute Resolution to cancel the One Month Notice and as such, should receive compensation for the dispute resolution filing fee.

### Conclusion

The One Month Notice is cancelled, and the tenancy will continue until ended in accordance with the Act.

As compensation for the filing fee, I authorize the Tenants to deduct \$100.00 from a future rent payment to the Landlord, in accordance with Section 72 of 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: December 15, 2020

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Residential Tenancy Branch