



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNR, CNC, OLC

### Introduction

This hearing was convened as a result of the Tenant's Application for Dispute Resolution ("Application") under the *Residential Tenancy Act* ("Act") to cancel a One Month Notice to End Tenancy for Cause dated February 1, 2021 ("One Month Notice"); to cancel the 10 Day Notice to End Tenancy for Unpaid Rent dated February 3, 2021 ("10 Day Notice"); and for an Order directing the Landlord to comply with the Act, Regulation, or tenancy agreement.

The Tenant and the Landlord appeared at the teleconference hearing and gave affirmed testimony. I explained the hearing process to the Parties and gave them an opportunity to ask questions about the hearing process. One witness for the Tenant, J.R., was also available to testify, however, the opportunity did not present itself.

During the hearing the Tenant and the Landlord 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.

### Preliminary and Procedural Matters

The Tenant provided the Landlord's email address in the Application and the Landlord confirmed this in the hearing. At the end of the hearing, after the Landlord had disconnected, the Tenant gave me her email address for delivery of this Decision, so

that the Landlord would not know it (the Landlord was aware that this would happen before he disconnected his call).

The Parties confirmed their understanding that the Decision would be emailed to both Parties and any Orders sent to the appropriate Party.

At the outset of the hearing, the Landlord said and spelled his name for me, which is standard procedure. However, as the Landlord identified on the Application was different than how the Landlord identified himself in the hearing and in the tenancy agreement, I amended the Respondent's name in the Application to what the Landlord told me in the hearing, pursuant to section 64(3)(c) and Rule 4.2.

I advised the Parties that pursuant to Rule 7.4, I would only consider their written or documentary evidence to which they pointed or directed me in the hearing. I also advised them that they were not allowed to record the hearing and that anyone who was recording it was required to stop immediately.

Rule 2.3 authorizes me to dismiss unrelated disputes contained in a single application. The Tenant applied for different matters of dispute, the most urgent of which are the claims to set aside the 10 Day and One Month Notices. I advised the Parties that I found that not all the claims were sufficiently related to be determined during this proceeding. I said I would, therefore, only consider the Tenant's request to set aside the 10 Day and the One Month Notices at this proceeding. Therefore, the Tenant's other claim is dismissed, with leave to re-apply.

#### Issue(s) to be Decided

- Should the One Month Notice be cancelled or confirmed?
- Should the 10 Day 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 1, 2020, with a monthly rent of \$1,250.00, due on the first day of each month. The Parties agreed that the Tenant paid the Landlord a security deposit of \$625, and a pet damage deposit of \$215.00. The Landlord said he still holds the deposits in full. The Tenant said that the Landlord did not give her a copy of the tenancy agreement; however, the Tenant

uploaded a copy of the tenancy agreement with her evidentiary submissions.

One Month Notice

The Parties agreed that the Landlord served the Tenant with the One Month Notice, which was signed and dated February 1, 2021, and has the rental unit address. The One Month Notice was served in person on February 1, 2021, with an effective vacancy date of February 28, 2021 that is automatically corrected by the Act to March 31, 2021. The One Month Notice was served on the grounds that the Tenant allowed an unreasonable number of occupants in the unit/property. Further, under the section entitled "Details of Cause(s):" the Landlord handwrote the following:

- (1) The tenant have different people in suite for night staying almost every night
  - (2) I allowed small dog. But it is big dog not trained properly. Dog shit around my yard.
  - (3) I see her guests smoke on my property & I saw her smoking too. That is breach of contract.
- [reproduced as written]

In the hearing, the Landlord said:

There was a clause [in the tenancy agreement] that she should be the main tenant and I started seeing a lot of people coming. Once in a while for guests is okay, but there was a vehicle, I saw people smoking outside the door, and one time her too.

Also, if someone got sick and let the dog poop all over and that's not good for food safe. I have an apple orchard and there's dog feces in the orchard and on the neighbouring property repeatedly.

And she comes from work and she just lets her dog go and it shits all over my yard.

The Tenant said:

First, I have my dog on a lead, so he can only go so far. Second, I didn't have a copy of my lease agreement, and so when he said no smoking on the property, I can't memorize everything in a contract that hasn't been given to me. So, I told my friend it's a three-minute walk to get to the road. I said if you're going to

smoke, you do that on your time, but that's not going to affect me or my living situation, and this is what he started to do. I no longer talk to him, so he's not around.

Having my dog on a lead. I know my certain radius to pick up poop, so I do that once a week, since I work full time. I only have once a week to do so.

The Landlord said:

In the contract, I never allowed her dog to poop around my house. I live in a nice area. If someone has a pet, pick up the poop right away. I live in a nice place. She never ties it. It attacked one of my neighbours – you guys can call him. It's not fair for the pet, too. I don't expect that. It's not good for pet either, right, if it stays for so long inside. And it cries. My Dad lives with me and it's not fair to us. He's 90 and it's not fair.

Other thing I wanted to say, she also had a cat that cat, but she said just one dog. That's not fair if you are saying small dog and it's not a small dog. And it affects my daily routine. I'm proud of my place. I don't want my place to be like this. I never allowed that in the contract.

The Tenant said:

The fact that my dog is seven years old and he approved it. My friend drove me there and he has approved my dog, and he said it's okay. He wasn't too big on the day that he approved him. Having a dog, obviously . . . I don't know if people pick up poo. . . Right outside my door picking that up once a week. In the winter, when it's fully snowed, and you can't find it to pick it up.

The Landlord said:

I never allowed anybody in my yard – I don't want them to see that dog shit. If she don't want to take her on a leash.... I grow apples and for food safety they don't allow anything - they have guidelines - if you have any pets you have to respect it.

I asked the Landlord if he had mentioned cleaning up the dog feces at the start of the tenancy. He said:

She got small dog allowed, and if I expect if she has dogs, she's not renting my whole property. I told her that I need my place nice and clean here. That's the rule for pets, too. Somebody can sue me if that dog bit someone.

I asked the Landlord if he approved the dog in person when the Tenant applied to rent the premise. The Landlord said:

It was in the car and I saw it, but she was so desperate to get the place, and she's from Summerland, my old town and I . . . My wife has a nice garden and that dog goes over there and poops and disturbs our daily life.

The Tenant said:

What he gave me for paperwork there is - I can't remember how many pictures of dog poop - he sent me while I was at work - but four of them are the same pieces of poop, so he's trying to make it look like there are more dog feces than there actually is. If you look at the pictures you will see it is the exact same picture. He fabricated it into separate files to give the impression of multiple incidents.

The Landlord said:

The dog shits everyday. I'm not supposed to take pictures of everyday. When I go in the morning and check my irrigation, my feet go in that shit. I'm not supposed to take pictures every time. So, I have enough pictures. And later too, after that, too, more pictures I can send you.

I advised the Parties that they cannot submit any further evidence, now that we have had the hearing. All evidence was to arrive prior to the hearing.

I note paragraph 26 of the tenancy agreement states:

26. LAWN, GARDEN, YARDS: The Tenant agrees to maintain these in a prudent, careful and tidy manner.

The execution portion of the tenancy agreement to which the Tenant signed is immediately below paragraph 26.

10 Day Notice

The 10 Day Notice was signed and dated February 3, 2021, and it states the rental unit address. The Landlord served the Tenant with the 10 Day Notice in person on February 3, 2021, and it has an effective vacancy date of February 13, 2021. The 10 Day Notice was served on the grounds that the Tenant failed to pay \$1,250.00 in rent when it was due on February 1, 2021.

In answer to why he served the Tenant with the 10 Day Notice, the Landlord said:

Because when I gave her the [One Month] notice, she was kind of aggressive and she said, 'I'm not going to pay you any rent', but I deserved my rent, if she was not going to leave the place. So that's why I served that.

When I served the [One Month Notice] on February 1<sup>st</sup>, she said she's not going to pay the rent, because I'm kicking her out. She paid me maybe after a couple days. In the first five days of February.

The Tenant said:

Service BC said that if I went home and paid my rent, I would be off the hook, so that's no longer relevant. I paid – February 5 – I have a receipt – at around 11 a.m.

The Landlord did not dispute that the Tenant paid her rent for February 2021 on February 5, 2021.

Analysis

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

Rule 6.6 sets out the standard of proof and the onus of proof in dispute resolution proceedings, as follows:

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed.

The onus to prove their case is on the person making the claim. In most circumstances this is the person making the application. However, in some situations the arbitrator may determine the onus of proof is on the other party. For example, the landlord must prove the reason they wish to end the tenancy when the tenant applies to cancel a Notice to End Tenancy.

### One Month Notice

Section 47 of the Act allows the landlord to end a tenancy for cause:

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

. . .

(c) there are an unreasonable number of occupants in a rental unit;

(d) the tenant or a person permitted on the residential property by the tenant has

(i) significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property,

(ii) seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant, or

(iii) put the landlord's property at significant risk;

. . .

In this case, the Landlord alleged that the Tenant had too many occupants in the rental unit, and that the Tenant's dog's feces "disturbs our daily life". I find from the evidence before me that the Tenant had one friend staying over night at times, but that the friend is no longer in the Tenant's life. The Landlord did not refer me to a section of the tenancy agreement that prohibits the Tenant from having a guest over at night. I find that the Landlord has not provided sufficient evidence to support his claim that the tenancy should end, because the Tenant has an unreasonable number of occupants in the rental unit. I, therefore, dismiss this claim without leave to reapply.

In terms of the Landlord's complaint about the dog feces in the yard, I find that the Tenant is correct in that the Landlord provided photographs of the same dog feces from different angles, presumably in order to provide more evidence to support his claim.

I appreciate it would be better for the Landlord and more reasonable for the Tenant to

clean up her dog's feces more than once a week, and that it disturbs the Landlord and his wife. Further, I find that the Tenant is not complying with section 26 of the tenancy agreement, which sets out her agreement to "maintain [the lawn, garden and yards] in a prudent, careful and tidy manner." However, I find that the Landlord has not established that this was a material term of the tenancy agreement.

RTB Policy Guideline 8 ("PG #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.

The Tenant said that the Landlord did not provide her with a copy of the tenancy agreement; however, the Tenant submitted a copy of this agreement with her evidentiary documents. As such, I find that the Tenant should have been aware of her obligations under clause 26, which addresses this issue.

Still, there is no evidence before me that the Landlord informed the Tenant in writing that the Tenant's failure to collect the dog's feces often enough is a problem, or that he advised her in writing of the other details noted in PG #8 above. Based on the evidence before me, I find that the Parties did not turn their minds to the importance of the Tenant attending to the cleanliness of the residential property yard and gardens, such that they agreed to it being a material term.

Further, I find that the Landlord has not provided sufficient evidence, nor has he even claimed in his Application that this matter has "significantly interfered with or unreasonably disturbed" the Landlord, and that it is a ground for ending a tenancy..

In order to improve the Parties' interactions with each other, and thereby improve everyone's living conditions, **I encourage the Tenant** to increase the number of times she cleans up her dog's feces in the yard each week. I find it inconsistent with common sense and ordinary human experience that it is, in fact, acceptable to clean up after a dog only once a week. The yard is a common area that the Tenant has agreed to "maintain in a prudent, careful and tidy manner" under the tenancy agreement. I urge the Tenant to comply with her obligations under the tenancy agreement. **If the Landlord were to give the Tenant written warning** as noted above, another arbitrator in a future hearing may find it grounds to end the tenancy, if the Tenant does not improve her practice of cleaning up her dog's feces only once a week. This is merely a caution to the Tenant, given the particular set of circumstances before me in this matter.

When I consider all the evidence before me overall, I find that the Landlord has not provided sufficient evidence to meet his burden of proof on a balance of probabilities, and to support the validity of the One Month Notice. **I, therefore, cancel the One Month Notice** and find that it is void and unenforceable.

### 10 Day Notice

Section 46 (1) of the Act outlines the grounds on which to issue a 10 Day Notice for non-payment of rent:

**46** (1) A landlord may end a tenancy if rent is unpaid on any day after the day it is due, by giving notice to end the tenancy effective on a date that is not earlier than 10 days after the date the tenant receives the notice.

(2) A notice under this section must comply with section 52 *[form and content of notice to end tenancy]*.

(3) A notice under this section has no effect if the amount of rent that is unpaid is an amount the tenant is permitted under this Act to deduct from rent.

(4) Within 5 days after receiving a notice under this section, the tenant may

- (a) pay the overdue rent, in which case the notice has no effect, or
- (b) dispute the notice by making an application for dispute resolution.

Based on the evidence before me, I find that the Tenant paid rent for February 2021 to the Landlord on February 5, 2021. Therefore, and pursuant to section 46(4)(a) of the Act, I find that the 10 Day Notice is of no effect, and **I cancel the 10 Day Notice** and find it to be unenforceable.

### Conclusion

The Tenant is successful in her Application to cancel the One Month Notice and the 10 Day Notice, as the Landlord did not provide sufficient evidence to support the enforcement of either Notice.

The Tenant's claim for an Order for the Landlord to Comply with the Act or tenancy agreement was severed from this Application, as being not sufficiently related to the urgent claims involving whether the tenancy continues or not. As such, this claim is dismissed with leave to reapply.

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

This Decision is final and binding on the Parties, unless otherwise provided under the Act, and 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: May 07, 2021

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Residential Tenancy Branch