



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNC, OLC, FF

### Introduction

This hearing dealt with the tenant's application for dispute resolution seeking remedy under the Residential Tenancy Act (Act) for:

- an order cancelling the One Month Notice to End Tenancy for Cause (Notice) issued by the landlord;
- an order requiring the landlord to comply with the Act, regulations, or tenancy agreement; and
- to recover the cost of the filing fee.

The tenant and the landlord's agent (agent) attended, the hearing process was explained, and they were given an opportunity to ask questions about the hearing process.

The parties were informed at the start of the hearing that recording of the dispute resolution hearing is prohibited. The parties were also informed that if any recording devices were being used, they were directed to immediately cease the recording of the hearing.

Both parties affirmed they were not recording the hearing.

The agent confirmed receiving the tenant's application.

Thereafter the parties were provided the opportunity to present their evidence orally and to refer to relevant documentary evidence submitted prior to the hearing, and make submissions to me.

I have reviewed all oral and written evidence before me that met the requirements of the Rules. However, not all details of the parties' respective submissions and or arguments are reproduced here; further, only the evidence specifically referenced by the parties and relevant to the issues and findings in this matter are described in this Decision.

Words utilizing the singular shall also include the plural and vice versa where the context requires.

#### Preliminary and Procedural Matters-

The landlord confirmed receiving the tenant's evidence. The tenant confirmed receiving the majority of the landlord's evidence, with the exception of a local newspaper article. The agent stated their evidence was sent to the tenant by registered mail and the tracking report showed it was available but not collected. I find the landlord sufficiently served the tenant with their evidence, as I find failure to collect registered mail is not a defense to whether it was served.

I note that the newspaper article was not relevant to the issues at hand, and it was not considered in making this Decision.

#### Issue(s) to be Decided

Has the landlord submitted sufficient evidence to support their Notice or is the tenant entitled to an order cancelling the Notice?

#### Background and Evidence

The tenancy began on or about September 1, 2018.

Filed in evidence by the landlord was the Notice. The Notice was dated August 17, 2021, for an effective date of September 30, 2021, and was served on the tenant by registered mail, according to the landlord. The tenant confirmed receipt of the Notice on August 20, 2021 and made this application on August 23, 2021.

The reason stated on the Notice to end the tenancy was:

- the tenant breached a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.

***The agent provided the following testimony and references to their documentary evidence:***

The agent submitted that, although the rental unit is normally a “no pets allowed” accommodation, section (b) of the Addendum to the tenancy agreement (addendum) shows that the tenant was allowed one dog in the rental unit.

Further, the tenant was allowed only the dog named in the separate Pet Maintenance Agreement (agreement). The agent submitted that the two separate documents signed by the tenant were attached to and made a part of the written tenancy agreement. Filed in evidence was the written tenancy agreement, the addendum, and the agreement (collectively, the documents).

The agent submitted that the tenant violated the tenancy agreement by now having two dogs in the rental unit, neither one of them the dog named in the agreement.

The agent submitted that the tenant was provided a written warning to comply with the tenancy agreement when she learned the tenant had additional pets, but failed to remove the dogs by the deadline given, or at all. Filed in evidence was a copy of the warning letter.

The agent asserted that the tenant’s signature on the documents shows the materiality of the terms.

***The tenant provided the following testimony and references to her documentary evidence:***

The tenant submitted that the terms in the documents restricting pets were vague. The tenant submitted that she moved into the rental unit with a cat and dog, which demonstrated having two pets was not an issue.

The tenant submitted that the tenancy agreement did not restrict how many pets she could have and there was no reason she could not have other animals in the rental unit.

The tenant submitted that any terms in the tenancy agreement relating to pets were not material.

The tenant agreed she no longer had the dog listed in the agreement.

Filed in evidence was text message communication between the tenant and the agent and a written letter to the landlord.

### Analysis

Section 47(1)(h) of the Act authorizes a landlord to end a tenancy if the tenant breached a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.

Where a Notice to End a Tenancy comes under dispute, the landlord has the burden to prove the tenancy should end for the reason(s) indicated on the Notice. The burden of proof is based on the balance of probabilities, meaning the events as described by one party are more likely than not.

In this case, I find the Addendum to the tenancy agreement clearly shows that the tenant was allowed only one dog in the rental unit. On the pre-printed clause regarding pets, the word "Pet(s):" was listed, and the word "NONE" to the side was marked through. To the side of that word, there was a clear, handwritten notation, "1 Dog".

To further support this evidence, there was a separate pet agreement, which listed one specific, named dog.

In considering whether the clauses in the documents regarding pets were material, I find the fact that the landlord created two separate documents apart from the written tenancy agreement addressing pets in the rental unit shows this issue was important overall within the context of the tenancy agreement. For this reason, I find that the clauses are material terms. If the terms were not material, I find it reasonable the landlord would not have created two separate documents to address the matter of one, specific dog.

I also find the tenant was provided a written notice to comply with the material terms of the tenancy agreement and the undisputed evidence is that the tenant failed to do so.

Given the above, I find the landlord has submitted sufficient evidence to prove on a balance of probabilities that the tenant has breached a material term of the tenancy agreement and has not complied, after written notice to do so.

For this reason, I **dismiss** the tenant's application requesting cancellation of the Notice, without leave to reapply, as I find the One Month Notice dated August 17, 2021 valid, supported by the landlord's evidence, and therefore, enforceable. I therefore uphold the Notice and I **order** the tenancy ended on the effective date of that Notice, or September 30, 2021.

Under Section 55(1)(b) of the Act, I grant the landlord an order of possession of the rental unit, effective **two (2) days after service on the tenant**.

Should the tenant fail to vacate the rental unit pursuant to the terms of the order after it has been served upon her, this order may be filed in the Supreme Court of British Columbia for enforcement as an order of that Court.

The tenant is cautioned that costs of such enforcement, such as bailiff costs, are recoverable from the tenant.

In recognition that it is highly unlikely that the tenant could comply with the two day timeline given the matter of having two pets and the fact the tenant most likely paid the monthly rent for January 2022, the parties are encouraged to agree to arrange another date on which the tenant could comply with this Decision.

As I have dismissed the tenant's application seeking cancellation of the Notice, I dismiss without leave to reapply the tenant's request for orders for the landlord's compliance with the Act, as the tenancy is ending.

I decline to award the tenant recovery of the filing fee, as the application is dismissed.

### Conclusion

The tenant's application for dispute resolution is dismissed, without leave to reapply, for the reasons listed herein.

The landlord is granted an order of possession of the rental unit, effective two (2) days after service on the tenant.

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*. Pursuant to

section 77 of the Act, a decision or an order is final and binding, except as otherwise provided in the Act.

Dated: January 5, 2022

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Residential Tenancy Branch