



# Dispute Resolution Services

Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

**Dispute Codes**      CNC

### **Introduction**

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

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

The tenant testified, and the landlord confirmed, that the tenant served the landlord with the notice of dispute resolution package and supporting documentary evidence. The landlord testified, and the tenant confirmed, that the landlord served the tenant with their documentary evidence. I find that all parties have been served with the required documents in accordance with the Act.

### **Issues to be Decided**

Is the tenant entitled to an order cancelling the Notice?

If not, is the landlord entitled to an order of possession?

### **Background and Evidence**

While I have considered the documentary evidence and the testimony of the parties, not all details of their submissions and arguments are reproduced here. The relevant and important aspects of the parties' claims and my findings are set out below.

The tenant, her now ex-boyfriend ("**MM**"), and the landlord entered into a tenancy agreement on March 1, 2020. Monthly rent is \$1,150 and is due on the first of the month. The tenant and MM paid the landlord a security deposit of \$575, which the landlord continues to hold in trust for the tenant. MM vacated the rental unit in July 2020 and was removed as a party to the tenancy agreement shortly thereafter.

The tenancy agreement includes an addendum which states:

The tenant agrees that a breach of any of the provisions of the following conditions, listed below, shall constitute a breach of a material covenant of the tenancy agreement.

[...]

12. The tenants agree that they are not permitted to keep a pet or have a guest pet visit without payment of an additional pet deposit and written permission from the landlord.

(the “**No Pet Clause**”)

On January 9, 2022 the landlord served the tenant with the Notice by posting it on the door of the rental unit. The tenant disputed the notice on January 19, 2022.

The Notice listed the reasons for it being issued as:

- Tenant is repeatedly late paying rent; and
- Breach of material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.

The Notice provided the following details:

Tenant has been late with rent repeatedly; more then three times. Tenant has gotten a dog without permission; Has not corrected (removed) the dog despite written notice to do so, written notice given October 26, 2021 for the dog. Written notice July 9, 2020 for late rents.

The landlord testified that the tenant had paid her rent late for March and July 2020 as well as for January 2022. The tenant did not deny this.

The landlord testified that on October 25, 2021, he learned that the tenant had been keeping a dog in the rental unit for quite some time. He stated that he had seen the dog on the residential property previously but thought that the dog was not the tenant's and was only visiting.

On October 26, 2021, the landlord posted a letter on the tenant's door giving her notice that he considered the presence of the dog in the rental unit to be a breach of a material term of the tenancy agreement. He wrote that he had not given written permission for the dog to be kept, and he requested that the dog be “permanently off the premises by October 29, 2021”.

The landlord testified that he did not receive any further update from the tenant about the dog, and that to the best of his knowledge the dog remained on the residential property. He testified that he waited until January 9, 2022 to serve her with the Notice, which he argued provide the tenant with ample time for the tenant to comply with his demand to relocate the dog.

The tenant did not deny that the dog was living in the rental unit and had been since April 2021. He testified that at first the dog was living there temporarily, but she decided to keep the dog permanently as it was assisting her in coping with some mental health issues. She testified that the dog was a “therapy dog” and that her therapist wrote a letter stating that the tenant had a need for a therapy dog and that it did assist with the tenant’s mental health issues. The tenant did not submit a copy of this letter into evidence.

The tenant testified that having the dog has had a “very positive impact” on her life. She stated that her dog has not damaged the rental unit at all, and that the dog does not bark and does not disturb any of the neighbors. She also testified that there were other pets in the building including “a small dog” and at least one cat.

The tenant stated that she has made a complaint to the Human Rights Tribunal against the landlord, but that this matter had not yet come to a hearing. She also testified that the parties attended a previous hearing at the RTB relating to a different notice to end tenancy issued by the landlord for reasons unrelated to late payment of rent or breaching the No Pet Clause. That application was filed by the tenant in August 2021 and came to a hearing on January 4, 2022. The tenant was successful, and the previous notice to end tenancy was cancelled by an order of the presiding arbitrator made on January 5, 2022.

The tenant alleged that the Notice was only issued because the landlord was unsuccessful in the January 2022 application (it was served 4 days after the previous notice was ordered cancelled), and that it was part of the landlord’s attempt to characterize her as a bad tenant.

## **Analysis**

### **1. Late Rent**

Residential Tenancy Branch Policy Guideline 38 states “three late payments are the minimum number sufficient to justify a notice under these provisions”.

However, section 7 of COVID-19 (*Residential Tenancy Act And Manufactured Home Park Tenancy Act*) (No. 2) Regulation (“**COVID Regulation**”) states:

#### **Notices to end tenancy**

7 (1) As an exception to sections 44 (1) (a) (iii) and 47 (1) [*landlord’s notice: cause*] of the *Residential Tenancy Act* and any other provision of the *Residential Tenancy Act* and the *Residential Tenancy Regulation*, a landlord must not give a tenant notice to end a tenancy under section 47 (1) of the *Residential Tenancy Act* in respect of a reason that relates to the affected rent being unpaid, including one or more of the following reasons:

- (a) one or more payments of the affected rent are late;

The COVID Regulation contains the following definitions:

**“affected rent”** means

(a) rent that becomes due to be paid by a tenant in accordance with a tenancy agreement during the specified period

[...]

**“specified period”** means the period that starts March 18, 2020 and ends on the earlier of the following:

(a) August 17, 2020;

(b) the date on which the last extension of the declaration of a state of emergency made March 18, 2020 under section 9 (1) of the *Emergency Program Act* expires or is cancelled.

As such, the tenant’s late payments of rent in April and July 2020 cannot form the basis for ending the tenancy due to late payment of rent.

As the late payments made in 2020 cannot form a basis to end a tenancy for late payment of rent, the landlord is only left with one occurrences of the tenant paying rent late. This is not sufficient toward ending a tenancy, per Policy Guideline 38. As such, I cancel this portion of the Notice.

## 2. No Pet Clause

### a. Is it a valid clause?

Section 18 of the Act explicitly allows tenancy agreements to restrict or prohibits pets. It states:

#### **Terms respecting pets and pet damage deposits**

**18(1)** A tenancy agreement may include terms or conditions doing either or both of the following:

(a) prohibiting pets, or restricting the size, kind or number of pets a tenant may keep on the residential property;

(b) governing a tenant's obligations in respect of keeping a pet on the residential property.

[...]

(3) This section is subject to the *Guide Dog and Service Dog Act*.

Section 1 of the *Guide Dog and Service Dog Act* states:

"service dog" means a dog that

(a) is trained to perform specific tasks to assist a person with a disability,  
and

(b) is certified as a service dog;

"certified" means certified by the registrar under section 6 or deemed to be certified under section 6.1;

Sections 6 and 6.1 of the *Guide Dog and Service Dog Act* state:

**Certification**

6(1) The registrar may issue or renew a certificate referred to in section 5(1), in a form satisfactory to the registrar, if the registrar is satisfied that the individual or the dog, or both, as the case may be, identified in the certificate meet all of the conditions, qualifications and requirements imposed under this Act and the regulations.

(2) The registrar may

(a) impose on a certificate any terms and conditions that the registrar considers appropriate, and

(b) amend or remove a term or condition of a certificate.

(3) A certificate expires at the end of the day specified in the certificate.

**Deemed certification**

6.1(1) A blind person and a dog are deemed to be certified as a guide dog team if the person holds a valid identification card issued to the team by an accredited or recognized training school.

(2) A person with a disability and a dog are deemed to be certified as a service dog team if the person holds a valid identification card issued to the team by an accredited or recognized training school.

(3) Certification of a guide dog team under subsection (1) or a service dog team under subsection (2) ends on the earlier of the following:

(a) the expiry date specified on the identification card;

(b) the date on which an accredited or recognized training school revokes the identification card it issued to the team.

The definition of "service dog" is clear. A "service dog" must both be trained to perform specific tasks to assist a person with a disability and must be certified (or deemed certified) to do so. There is nothing in evidence to suggest that the tenant's dog is a "service dog", as defined by the *Guide Dog and Service Dog Act*.

The tenant did not allege that her dog is a "service dog". She stated that it was a "therapy dog". The *Guide Dog and Service Dog Act* does not contain a defined term of "therapy dog" nor does it contain reference to dogs used for therapeutic reasons. As such, I do not find that the *Guide Dog and Service Dog Act* applies to the tenant's dog.

The *Residential Tenancy Act* does not contain an exception to section 18 for "therapy dogs" or dogs used for a therapeutic purpose. As such, I find that the landlord was entitled to include the No Pet Clause in the tenancy agreement.

I note that this does not mean that I do not believe the tenant's testimony that her dog is a "therapy dog" or that her having the dog has been beneficial to her mental health. I think that both are true. It only means that the landlord is not prevented from including a term in the tenancy agreement which requires that they give permission to a tenant in order for a tenant to keep a non-service dog, or to withhold consent for a tenant to have a non-service dog.

b. Did the tenant breach a material term of the Act and fail to correct it?

Section 47(1)(h) of the Act 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:

[...]

(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;

The tenancy agreement explicitly identified the No Pet Clause as a material term. It required the tenant to obtain written permissions before being allowed to keep a pet in the rental unit. The tenant did not obtain such permission. As such, she is in breach of this term.

The landlord gave the tenant written notice to correct this breach on October 25, 2021. The tenant did not correct it. The landlord waited over two months before issuing the Notice. I find that this is a sufficiently reasonable period of time to allow the tenant to correct the Notice.

I note that the motives behind the landlord issuing the Notice are not relevant to its validity. I must only assess whether the underlying facts alleged on the Notice are true. There is no "good faith" requirement for a landlord when issuing a notice to end tenancy for cause. This is not to say that the landlord acted in bad faith when issuing the Notice (the fact that he served the October 25 warning letter before he knew the outcome of the January 4, 2022 hearing would suggest that he did not). I only include this digression to address the argument raised by the tenant at the hearing and to explain why it is not necessary for me to make factual determinations as to the landlord's motivation when issuing the Notice.

I find that the landlord has satisfied the requirements of section 47(1)(h) of the Act. He has proven that the tenant breached a material term of the tenancy agreement, that he gave the tenant written notice to comply with the material term and that she failed to do so within a reasonable period of time.

As such, I find that this basis for issuing the Notice is valid.

Section 55 of the Act states:

**Order of possession for the landlord**

55 (1) If a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, the director must grant to the landlord an order of possession of the rental unit if

(a) the landlord's notice to end tenancy complies with section

52 [*form and content of notice to end tenancy*], and

(b) the director, during the dispute resolution proceeding, dismisses the tenant's application or upholds the landlord's notice.

I find that the form of the Notice complies with section 52 of the Act.

As I have dismissed the tenant's application, and I have found that the Notice complies with section 52 of the Act, I find that the landlord is entitled to an order of possession.

At the hearing, I asked the parties to make submissions as to what would be a reasonable effective date for an order of possession (in the event I issued one). The landlord asked to hear the tenant's proposal before offering his own. The tenant stated that she did not want to think about the possibility of being evicted and did not make submissions. I asked if the parties thought that 30 days would be a reasonable amount of time to give the tenant to vacate the rental unit. The landlord agreed that it would be, given that the tenant would be required to pay a full month's rent on April 1, 2022, and that it may be difficult to find new lodgings that allow pets.

As such, the order of possession will be effective 30 days after the landlord serves the tenant with a copy of it and of this decision.

**Conclusion**

Pursuant to section 55 of the Act, I order that the tenant deliver vacant possession of the rental unit to the landlord within 30 days of being served with a copy of this decision and attached order(s) by the landlord.

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: April 1, 2022