



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding Campbell River and District Association for Community  
Living and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      CNC

### Introduction

Pursuant to section 58 of the *Residential Tenancy Act* (the Act), I was designated to hear an application regarding a residential tenancy dispute. On March 3, 2022 the tenant applied for an order to cancel a One Month Notice to End Tenancy for Cause, dated February 28, 2022 (the One Month Notice).

Those present were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses; they were also made aware of Residential Tenancy Branch Rule of Procedure 6.11 prohibiting recording dispute resolution hearings.

The tenant testified that she served the Notice of Dispute Resolution Proceeding (NDRP) and her evidence on the landlord by registered mail on March 10, 2022, and additional evidence in person on May 19 or 20, 2022. The landlord confirmed receiving the tenant's NDRP and evidence.

The landlord testified she served her responsive evidence on the tenant in person on June 2, 2022, and the tenant confirmed she received it. The tenant testified she was not able to view the two videos provided by the landlord, and advised the landlord accordingly. The landlord testified that she offered for the tenant to view the videos on the landlord's computer. I was also not able to view the two videos submitted as evidence by the landlord; the two videos will not be considered in my decision.

### Preliminary Matter

In the application, the landlord's name was listed as an abbreviation. On the cover page of this decision I have named the landlord by their legal name, confirmed by the landlord

and found on the signed tenancy agreement. The parties were consulted, and neither party objected. This amendment is in accordance with section 64(3)(c) of the Act.

### Issue to be Decided

- 1) Is the tenant entitled to an order to cancel the One Month Notice?
- 2) If not, is the landlord entitled to an order of possession?

### Background and Evidence

Those present agreed on the following particulars of the tenancy. It began June 1, 2015; rent is \$349.00, due on the first of the month; and the tenant paid a security deposit of \$187.50, which the landlord still holds.

A copy of the One Month Notice was submitted as evidence. The landlord testified she served the One Month Notice on the tenant in person on February 28, 2022; the tenant confirmed receiving the Notice as described.

The One Month Notice is signed and dated by the landlord, gives the address of the rental unit, states the effective date, states the reasons for ending the tenancy, and is in the approved form.

The One Month Notice indicates the reason for the Notice is that 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 Details of the Events section of the One Month Notice references section 26 of the tenancy agreement, and states that "No pets are allowed on [the] property or in suites." The Notice references the tenant's son's dog being in the tenant's unit, and the tenant having been served with written warnings.

The landlord testified that the tenant disregarded the written warnings and kept allowing the dog to come into her unit, breaching section 26 of the tenancy agreement. The landlord testified that other tenants told her that the subject tenant was sneaking the dog in via the side door, which is not under video surveillance. The landlord testified that for some occurrences of the dog being present, the landlord was able to verify, by checking video surveillance, the reporting tenants' claims that the subject tenant had allowed the dog into the building.

The landlord provided testimony on two instances when the dog was at the tenant's unit: February 14, 2021 and February 22, 2021. The landlord testified that on one of those occasions the dog stayed in the unit for two days, and on the other, eight hours.

The tenant testified that section 26 of the tenancy agreement states that "the tenant must not keep" a pet. The tenant submitted that her son's dog would visit on occasion, and that the tenant was not keeping a pet. The tenant testified she stopped the dog's visits once she realized it was jeopardizing her tenancy.

The tenant testified that on one of the referenced occasion the dog was at her home for about an hour and a half, to allow the tenant to remove stitches from it's ear, ensure the site did not bleed, and to allow the tenant some time to visit with her son. The tenant submitted that perhaps the landlord thought the dog had stayed longer as the landlord did not see the dog leave.

The tenant testified that the dog has not been back on the property since February 2022. The tenant testified that even if her son comes to visit, the dog stays in her son's truck, off the property.

The tenant testified that there are other animals living on the property, that the landlord had a puppy on the property for two weeks, and that the previous manager had a dog.

The tenant testified that there are no signs that say animals are not allowed on the property.

The landlord testified that she cannot be constantly viewing the video footage, but that she has seen no other dogs on the property. The landlord testified that if she does, those tenants will receive a warning. The landlord testified she did not have a dog on the property for two weeks, but brought a new puppy "to say hello" one day in December 2020, and that the puppy had remained in her vehicle. The landlord testified that the previous manager did not have a dog.

A copy of the tenancy agreement is submitted as evidence; at section 26 it states:

**26. Pets.**

The tenant must not keep, any pet, including a dog, cat, reptile or exotic animal on the residential property.

The tenant may request in writing permission to keep only one of the following:

- (a) a caged small animal
- (b) a caged bird
- (c) fish in a small aquarium

Where the landlord has given his permission in writing, the tenant must ensure that the pet does not disturb any residents or neighbours of the property. A pet damage deposit of not more than one-half months rent shall be paid to the landlord. The tenant is liable for any damage caused by the pet.

Analysis

Based on the testimony of those present, I find the landlord served the tenant the One Month Notice on February 28, 2022, in accordance with section 88 of the Act, and that the tenant received it on the same day.

I find the One Month Notice meets the form and content requirements of section 52 of the Act, as it is signed and dated by the landlord, gives the address of the rental unit, states the effective date, states the reason for ending the tenancy, and is in the approved form.

As the One Month Notice was received by the tenant on February 28, 2022, in accordance with section 47(4) of the Act, the deadline to dispute it was 10 days later: March 10, 2022. As the tenant applied to dispute the One Month Notice on March 3, 2022, I find she applied within the deadline.

Section 47(1)(h) of the Act states that a landlord may give notice to end the tenancy if the tenant has failed to comply with a material term, and has not corrected the situation within a reasonable time after the landlord has given written notice to do so.

Rule 6.6 of the Rules of Procedure states:

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.

In this case, the onus is on the landlord to prove that the tenant has failed to comply with a material term, and has not corrected the situation within a reasonable time after the landlord has given written notice to do so.

The landlord has provided affirmed testimony that the tenant has breached a material term of the tenancy agreement by repeatedly allowing a dog to be brought onto the property and into the tenant's unit. The landlord has testified that during one instance the dog was in the tenant's unit for two days, and in another the dog was in the unit for eight hours.

The tenant has provided affirmed testimony that the dog would visit on occasion, and that the landlord may have missed seeing the dog leave, owing to not all of the building being visible on surveillance cameras.

The tenant has submitted that the tenancy agreement states that a "tenant may not keep" a pet, which is supported by the tenancy agreement submitted as evidence.

In considering the relevant portion of the tenancy agreement, and how it applies to this situation, I find that the statement in the tenancy agreement: "The tenant must not keep, [sic] any pet, ... on the residential property," suggests a permanent arrangement, whereas the circumstances described by both the tenant and the landlord involve the dog leaving the property after a short or relatively short time, two days being the longest time posited by the landlord. I find the instances of the tenant's son's dog being on the property were temporary visits, different from the tenant having a pet, or "keeping" a pet on the property.

Based on the evidence before me, and on a balance of probabilities, I find the landlord is not entitled to an order of possession because the landlord has failed to demonstrate that the tenant breached a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.

Therefore, the One Month Notice is cancelled.

### Conclusion

The tenant's application is granted. The tenancy will continue until it is ended in accordance with 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: June 16, 2022

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Residential Tenancy Branch