



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNC, FFT

### Introduction

The Tenant filed an Application for Dispute Resolution on April 29, 2022 seeking an order to cancel the One Month Notice to End Tenancy for Cause (the “One-Month Notice”). Their Landlord issued this One-Month Notice on April 27, 2022. The Tenant also seeks recompense for the Application filing fee.

The matter proceeded by way of a hearing pursuant to s. 74(2) of the *Residential Tenancy Act* (the “Act”) on August 30, 2022. In the conference call hearing, I explained the process and offered each party the opportunity to ask questions.

Both parties attended the hearing, and I provided each the opportunity to present oral testimony and make submissions during the hearing. Each party confirmed they received the prepared evidence of the other in advance of this hearing.

### Issue to be Decided

Is the Tenant entitled to a cancellation of the One-Month Notice issued by the Landlord on April 27, 2022?

Is the Tenant entitled to reimbursement of the Application filing fee, pursuant to s. 72 of the *Act*?

### Background and Evidence

The parties agreed to the basic terms of the tenancy agreement that was in place since October 15, 2016, signed on September 16, 2016. The rent amount of \$950 increased to \$1,167.25 by the time of this hearing.

The Landlord presented that the original agreement presented “no pets”; however, they clarified in the hearing that this meant there was no pet damage deposit paid by the Tenant. The term ‘no pets’ does not appear in the tenancy agreement.

The Tenant paid a \$100 pet damage deposit when their family member was added to the second tenancy agreement they signed, a copy of which is in the Landlord’s evidence. The Tenant presented they signed this agreement, adding the family member, because of that family member’s short-term visit as requested by the Landlord. This agreement specified: “damage deposit of 100 for dog.” This was the Tenant’s family member’s own dog.

The Tenant presented that the Landlord knew of their mainly-outdoor pet cat for the whole time during this tenancy. They maintained the Landlord was very much aware of their cat, and clearly stated to the Landlord that it was an outdoor cat in 2016. That was the last discussion they had with the Landlord on that topic. When their family member stayed, they brought a dog; however, that family member with their dog stayed only a couple of months. A statement from an acquaintance (and former Tenant) sets out that “the owners of the house were well aware that we were bringing a cat into the house, and at the time, did not object to our having the cat in the dwelling.”

The Landlord presented that they inspected all areas of the rental unit house when they came there to check after an insurance matter in 2021. Their inspection of the basement revealed pet droppings in a discrete area in the basement (what the Tenant described as their own area rug), and cat urine in one single spot. This factor meant “it won’t change” and likely damage would ensue from the cat using the basement “as a littler box” in this situation. The Landlord described an adjacent crawl space that would be very hard to clean should that cat use that area in a similar manner.

The Landlord presented in their evidence a note dated May 18, 2022 explaining that the Landlord did not know about a cat at the outset of the tenancy. They set out that they observed cat presence in the basement, “so the cat had access in and out.” They note: “This is [an] unacceptable situation to the property safety.”

The Landlord provided evidence of their communication to the Tenant on this issue, the relevant/noted pieces include the following:

- September 22, 2021 – notes a cat in residence, a cat litter box and the Tenant's own request that the inspector leave the door open to accommodate the cat's entry and exit. They instructed the Tenant to stop allowing the cat to access the house, or leaving doors and windows open for that purpose.
- a response from the Tenant dated December 10, 2021: "My pet will continue to remain with me, in my home."
- the instruction from the Landlord dated November 30, 2021 to "permanently remove the cat and litter box from the house . . . [by] December 10, 2021"

The Landlord does not live in the rental unit property; however, they have an allergy to cats as shown in the doctor's note they provided in the evidence, dated May 18, 2022.

The Tenant in the hearing presented that they had the cat for three years prior to moving into the rental unit. The emails increased in frequency after the insurance matter when the Landlord hired a property manager; prior to this, there was no communication from the Landlord directly. They recalled the Landlord building a front and back deck at the rental unit while the cat was present. Additionally, the Landlord who has the allergy does not reside at the rental unit property.

The Landlord issued the One-Month Notice on April 27, 2022 for the end-of-tenancy date of May 30, 2022. They indicated that the Tenant "put the landlord's property at significant risk" on page 2 of the document. They gave details: Tenant has brought a cat into the residence. . . . Tenant does not have written permission or otherwise to have a cat in residence. Cat is using the basement as a litter box. Once a cat starts to use a basement for a litter box, it will keep going back and the smell of urine is next to impossible to curtail."

### Analysis

The Act s. 47 provides that a Landlord may end a tenancy by giving a One-Month Notice to end the tenancy if any of the reasons listed in that section applies. This is reflected on the One-Month Notice here where the Landlord indicated a single reason.

In this matter, the Landlord has the onus to prove that the reason indicated for ending the tenancy is valid and sufficient.

I find the Tenant had the cat in place for quite some time during this tenancy before the Landlord chose to make an issue of that pet present in the rental unit in some capacity. I find it unreasonable that the Landlord would five years later request the pet's removal. I find the Tenant has the right to rely on the Landlord's inaction – those which did not change for the bulk of the tenancy thus far – that a cat was present at the rental property for quite some time. I rely on the common law principle at play in this situation – that of estoppel – where an assertion (that a cat is not allowed) that contradicts previous inaction cannot be relied upon. From this, I find the Tenant has the right to rely on the inaction of the Landlord – no inspections and/or naming the issue of a present cat – that a cat was implicitly allowed during the tenancy.

I find the Landlord was not diligent in focusing on this tenancy and did not name the cat as an issue for a significant length of time. Whether the Landlord actually knew about the cat cannot be proven; however, I find the Tenant credible on this point, with their direct testimony in the hearing in answer to my questions carrying more weight than a written statement from the Landlord in the evidence.

Additionally, it was never stated at any time that written permission was required; however, that appears to be a condition precedent listed on the One-Month Notice. The tenancy agreement was not explicit on the point that cats were not allowed, and it is unknown if there ever was a distinction between dogs and cats specifically. Moreover, I find the Landlord's allergy was not known to the Tenant and never mentioned in the past, even though the Landlord does not actually reside at the rental unit, making their allergy immaterial.

The Landlord in the hearing and in their evidence described the unclean state in the rental unit; however, I find this does not equate to a significant risk to the property. That would be a matter of damage to the property that must be properly assessed if it is to form a valid reason to end the tenancy. The matter of damage to the rental unit could

concern monetary compensation to the Landlord which they may choose to pursue should damage be proven; however, for the purpose of ending a tenancy, damage – being *marginally* a significant risk to the property – is not proven to a sufficient degree to end this tenancy.

In sum, I find the Tenant credible that their cat was in place for quite some time before it received scrutiny from the Landlord in the past year. The Landlord as owner of the property has the obligation to monitor and make known to the Tenant any issues that may jeopardize the tenancy, and this was not done in a timely manner, thus affecting the Tenant's right to remain possession.

### Conclusion

For the above reasons, I order that the One-Month Notice issued by the Landlord on April 27, 2022 is cancelled and of no force or effect. The tenancy shall continue.

As the tenant was successful in this Application, I find the Tenant is entitled to recover the \$100.00 filing fee paid for this Application. I authorize the Tenant to withhold the amount of \$100.00 from one future rent payment.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under s. 9.1(1) of the *Act*.

Dated: August 30, 2022

---

Residential Tenancy Branch