



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNC, FFT

### Introduction

This hearing dealt with an Application for Dispute Resolution that was filed by the Tenants (the Application) under the *Residential Tenancy Act* (the Act), on May 30, 2022, seeking:

- Cancellation of a One Month Notice to End Tenancy for Cause (the One Month Notice); and
- Recovery of the filing fee.

The hearing was convened by telephone conference call and was attended by the Tenants E.H. and S.D., as well as an agent for the Landlord D.W. (the Agent). All parties provided affirmed testimony. As the Agent acknowledged service of the Notice of Dispute Resolution Proceeding (NODRP), and raised no concerns with regards to service date or method, the hearing therefore proceeded as scheduled.

The parties were advised that pursuant to rule 6.10 of the Rules of Procedure, interruptions and inappropriate behavior would not be permitted and could result in limitations on participation, such as being muted, or exclusion from the proceedings. The parties were asked to refrain from speaking over me and one another and to hold their questions and responses until it was their opportunity to speak. The Parties were also advised that personal recordings of the proceeding were prohibited under the Rules of Procedure and confirmed that they were not recording the proceedings.

At the request of the parties, copies of the decision and any orders issued in their favor will be emailed to them at the email addresses confirmed at the hearing.

Issue(s) to be Decided

Are the Tenants entitled to cancellation of the One Month Notice?

If not, is the Landlord entitled to an Order of Possession?

Are the Tenants entitled to recovery of the \$100.00 filing fee?

Background and Evidence

The written tenancy agreement in the documentary evidence before me states that the one-year fixed term tenancy commenced on June 1, 2000. Term 17 of the tenancy agreement also states that no animals, birds, or pets of any kind shall be kept, sheltered, or fed on the premises without prior written permission of the landlord.

The parties agree that the Tenants were served the One Month Notice for breach of a material term by registered mail, for having a cat in the rental unit contrary to the written tenancy agreement. The Agent stated that the registered mail was sent on May 19, 2022, and a copy of the registered mail tracking information was submitted for my review and consideration. The registered mail tracking information shows that the register mail was sent as set out above, that a notice card was left on May 25, 2022, and that the registered mail was delivered on May 27, 2022. At the hearing, the Tenants confirm receipt on May 27, 2022.

The One Month Notice in the documentary evidence before me is signed and dated May 19, 2022, has an effective date of June 20, 2022, and states that the tenancy is being ended because the Tenants breached a material term of the tenancy agreement and did not correct the breach within a reasonable time after they were given written notice to do so. In the details of cause section of the One Month Notice it states the following:

During our site inspection on January 31st, 2022, our tenants brought a new cat into the property, without written permission from the Landlord, after their previous cat died. The previous cat was allowed by the RTB arbitrator as per the decision dated October 22, 2018, file no. 310261091. This decision only approved the deceased cat and didn't give the tenants the authorization to have another cat or pet.

Our tenancy agreement dated June 1, 2000, paragraph 17, explicitly states no pets allowed. We served a caution letter and notice for the material breach dated March 31, 2022, reiterating this material term and condition.

Our tenant's written response dated April 18th, confirmed they didn't seek nor received Landlord's permission for the cat and they will not be finding the cat a new home. As of the date of this notice, our tenants were given more than 30 days to resolve this matter.

The Landlord doesn't approve nor allow a cat or a pet in the property.

Although the Tenants agreed that they had a cat in the rental unit, they denied that this was a breach of a material term of the tenancy agreement and stated that they have always had pets in the rental unit since the start of the tenancy.

A previous decision was submitted for my review and consideration which dealt in part with whether term 17 of the tenancy agreement was a material term.

### Analysis

Based on the documentary evidence and testimony before me, I am satisfied that a tenancy to which the Act applies exists between the parties. I am also satisfied that the Tenants disputed the One Month Notice within the time period set out under section 47(4) of the Act. As the Canada Post tracking information indicates that the registered mail was not even available to the Tenants for delivery or pickup until May 25, 2022, I find that the deemed service date of May 24, 2022, does not apply. Regardless of whether you use the date the registered mail first became available to the Tenants according to the registered mail tracking information before me, May 25, 2022, or the date of actual receipt, May 27, 2022, I find that the Tenants complied with section 47(4) when they filed their Application on May 30, 2022.

Section 47(h) of the act states that landlord may end of tenancy by giving notice to end tenancy if the tenant has failed to comply with the material term, and has not corrected the situation within a reasonable time after the landlord gives written notice to do so. Although section 17 of the written tenancy agreement before me prohibits the Tenants from having pets in the rental unit without prior written consent of the Landlord, I am satisfied based on the previous decision from the Branch, that the matter of whether term 17 is a material term of the tenancy agreement, has already been decided, and is therefore res judicata, meaning that I cannot re-decide that matter as part of this Application. In the previous Decision before me dated October 22, 2018, the file number for which is recorded on the cover page of this Decision, it states that term 17 of the written tenancy agreement does not constitute a material term.

As I am satisfied that the Landlord is relying on term 17 of the written tenancy agreement as the basis for the One Month Notice before me for consideration, and a previous arbitrator has already found that term 17 is not a material term of the tenancy agreement, I therefore grant the Tenants' Application seeking cancellation of the One Month Notice for breach of a material term. Pursuant to sections 72(1) and 72(2)(a) of

the Act, I therefore grant the Tenants authority to withhold \$100.00 from the next months rent payable under the tenancy agreement for recovery of the filing fee.

Conclusion

I grant the Tenants' Application seeking cancellation of the One Month Notice and order that it is cancelled and of no force or effect.

I grant the Tenants authority to withhold \$100.00 in rent for recovery of the filing fee.

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: October 11, 2022

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Residential Tenancy Branch