



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      **CNC, OLC, FFT**

### Introduction

The words tenant and landlord in this decision have the same meaning as in the *Residential Tenancy Act*, (the "Act") and the singular of these words includes the plural.

This hearing dealt with an application filed by the tenant pursuant the *Residential Tenancy Act* (the "Act") for:

- An order to cancel a 1 Month Notice to End Tenancy for Cause, pursuant to sections 47 and 55;
- An order for the landlord to comply with the Act, regulations or tenancy agreement pursuant to section 62; and
- Authorization to recover the filing fee from the other party pursuant to section 72.

The tenant and both landlords attended the hearing. As all parties were present, service of documents was confirmed. The landlord acknowledged service of the tenant's Notice of Dispute Resolution Proceedings package and the tenant acknowledged service of the landlord's evidence. The tenant uploaded two photographs a day prior to the hearing and did not exchange those with the landlord. I excluded those photos from consideration in this decision as they were not exchanged in accordance with Rule 3 of the Residential Tenancy Branch Rules of Procedure.

The parties were informed at the start of the hearing that recording of the dispute resolution is prohibited under the Rule 6.11 of the Residential Tenancy Branch Rules of Procedure ("Rules") and that if any recording was made without my authorization, the offending party would be referred to the RTB Compliance Enforcement Unit for the purpose of an investigation and potential fine under the Act.

Each party was administered an oath to tell the truth and they each confirmed that they were not recording the hearing.

### Preliminary Issue

Residential Tenancy Branch Rules of Procedure, Rule 2.3 states that, if, in the course of the dispute resolution proceeding, the Arbitrator determines that it is appropriate to do so, the Arbitrator may sever or dismiss the unrelated disputes contained in a single application with or without leave to apply. Aside from the tenant's application to cancel the Notice to End Tenancy, I am exercising my discretion to dismiss the remainder of the issues identified in the tenants' application with leave to reapply as these matters are not related. Leave to reapply is not an extension of any applicable time limit.

### Issue(s) to be Decided

Should the landlord's 1 Month Notice to End Tenancy for Cause be upheld or cancelled?

If the application is successful, can the tenant recover the filing fee?

### Background and Evidence

At the commencement of the hearing, I advised the parties that in my decision, I would refer to specific documents presented to me during testimony pursuant to rule 7.4. In accordance with rules 3.6, I exercised my authority to determine the relevance, necessity and appropriateness of each party's evidence.

While I have turned my mind to all the documentary evidence, including photographs, diagrams, miscellaneous letters and e-mails, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of each of the parties' respective positions have been recorded and will be addressed in this decision.

The landlord gave the following testimony. The tenancy began 8 years ago. The rental unit is a side suite connected to the landlord's single- family home. Each side has their own yard and fenced-in area. Rent is currently set at \$1,035.00 per month. A security deposit was taken at the commencement of the tenancy however a condition inspection report was not signed by the parties.

On June 29, 2022, the landlord served the tenant with a 1 Month Notice to End Tenancy for Cause by placing a copy in the tenant's mailbox. A copy of the notice to end tenancy was provided as evidence. It provides the following reasons for ending the tenancy:

1. the tenant or a person permitted on the property by the tenant has put the landlord's property at significant risk;

2. Tenant or a person permitted on the property by the tenant has caused extraordinary damage to the unit/site or property/park;
3. tenant has not done required repairs of damage to the unit/site/property/park;
4. breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so;

Under "details of cause" the landlord writes:

*("Tenant") changed front door of suite without prior permission from Landlord.*

*Tenant has been asked to replace broken outside lamp.*

*Tenant placed additional pavers without permission and they are a tripping hazard.*

*Tenant has been asked many times to clean up yard, dispose of garbage, cut long grass, dispose of dog's waste hidden in long grass and return yard to an acceptable condition.*

*None of the above have been remedied.*

*Tenant also asked to keep windows closed during winter months to avoid heat loss as confirmed by BC Hydro increase in usage costs.*

*Tenant did not comply to the above requests. Requests re items above were made on the following dates:*

*Aug 3/20 - dog droppings on grass;*

*Aug 25/20 - clean up and dispose of garbage;*

*Oct 20/20 - remove items leaning on fence as fence leaning with load;*

*Nov 2/20, Mar 8/21 - remove dog waste from grass;*

*April 3/21 - inspection performed.*

*Requested broken outside lamp be replaced; windows be closed to conserve energy; damaged grass from dog waste be replaced; remove truck canopy from leaning on fence as it's causing fence to warp and lean; remove garbage and tidy up yard area; remove additional pavers as they are a tripping hazard;*

*Apr 27/21 - remove dog waste;*

*June 1/21 - remove dog waste;*

*Feb 18/22 - letter to Tenant re list of items to be attended to; grass to be cut; remove garbage and clean up; remove dog waste; remove truck canopy from leaning on fence; replace dog door, no permission given to replace; close windows to conserve energy;*

*May 24/22 - letter to Tenant re list of outstanding items (same items as noted above) to be attended to before inspection on May 30/22;*

*June 1/22 - letter to tenant giving another chance and opportunity to comply with and rectify requested items before another inspection on June 22/22.*

*Tenant has not complied to date.*

The significant risk to the property is the landlord's dog. The landlord testified that the dog is generally OK, he's a lovely dog, however the tenant goes to work early and comes home late, leaving the dog alone all day. The dog is not walked for upwards of 12 hours a day. Further, when the tenant got the dog, he took the original door off its frame and replaced it with a different door that has a doggie door on it. This was done without the landlord's permission or knowledge. The landlord submits that this violates section 31 of the Act and the tenant has been asked or told many times to change it back and the tenant has refused to do so. When the tenant first changed the door, he didn't provide a key to the landlord. After repeatedly asking, the tenant finally provided the landlords with a key to the door. The landlord testified that texts were sent on July 18, 2018 asking for a key, and written requests were made to return the original door on February 18<sup>th</sup> and May 24<sup>th</sup>. The May 24<sup>th</sup> letter gives the tenant an inspection date of May 30, 2022 to have a list of breaches to the tenancy agreement fixed.

Regarding the extraordinary damage to the unit or property, the landlord has repeatedly asked the tenant to cut his lawn. Since moving in 2015, the tenant has only mowed the lawn 3 times. The grass gets 2 feet tall at times. Further, and possibly worse is that the tenant lets his dog out to use the lawn to do his business and the tenant does not pick up the feces left by the large breed dog. In evidence, the landlord provided multiple photographs of the faecal matter left by the tenant's dog and another photo of the dog defecating on the lawn. The urine and feces kill the lawn and it cannot be remedied by simply shaking grass seed over the dead spots and watering it.

The tenant has also installed patio pavers overtop the original ones, causing a tripping hazard. The landlord has asked that they be removed, but the tenant has also refused to do so. Lastly, the tenant has stored items against the fence, causing it to lean over.

The tenant gave the following testimony. He had verbal permission from the landlord to get a dog. When he first got the dog, for the first 4 years, the dog went to daycare but when his job ended, he could no longer afford that and it stopped. He put in the dog door so that the dog could relieve himself while the tenant was at work. He testified the landlord gave him verbal permission to install the door.

There are a few patches of dead grass, but the tenant justifies that as the landlord has a hot tub extending onto his side of the property which also ruins the grass. The tenant has tried to replant grass seed; however the landlord keeps turning off the sprinkler to allow the new grass to take root. The tenant does not have a spigot for water on his

side of the property. The tenant also argues that he is not responsible for maintaining the lawn. The landlord provided no proof that it was his responsibility. He bought a lawnmower, as the lawn was getting too long however he hurt his back in the summer and couldn't continue.

The landlord's fence rotted out over 4 to 5 years ago, around when he got the dog. The gate is rotted as well. The landlord has only painted and primed their fence, neglecting to do the same to the tenant's area. The tenant had to put up a snow fence to stop his dog from going to the landlord's side of the yard. Their cat comes to the tenant's side, causing the dog to chase it. The tenant has purchased plywood to patch holes in the fence.

### Analysis

Both the landlord's testimony and the tenant's application indicate the landlord's 1 Month Notice to End Tenancy for Cause was delivered to the tenant by being placed in his mailbox on June 29<sup>th</sup>. He filed the application to dispute the notice on July 3<sup>rd</sup>, within the 10 days as required under section 47 of the Act.

Pursuant to rule 6.6 the landlord bears the burden to prove he or she has valid grounds to terminate the tenancy for cause. The landlord must show on a balance of probabilities, which is to say it is more likely than not, that the tenancy should be ended for the reasons identified in the Notice. If I find the landlord has proven any of the identified reasons for ending the tenancy, it will be upheld.

I turn first to the last reason for ending the tenancy: *breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so*.

Residential Tenancy Branch Policy Guideline PG-8 [Unconscionable and Material Terms] states:

### **Material Terms**

A material term is a term that the parties both agree is so important that the most trivial breach of that term gives the other party the right to end the agreement.

To determine the materiality of a term during a dispute resolution hearing, the Residential Tenancy Branch will focus upon the importance of the term in the overall scheme of the tenancy agreement, as opposed to the consequences of the breach. It falls to the person relying on the term to present evidence and argument supporting the proposition that the term was a material term.

The question of whether or not a term is material is determined by the facts and circumstances surrounding the creation of the tenancy agreement in question. It is possible that the same term may be material in one agreement and not material in another. Simply because the parties have put in the agreement that one or more terms are material is not decisive. During a dispute resolution proceeding, the Residential Tenancy Branch will look at the true intention of the parties in determining whether or not the clause is material.

To end a tenancy agreement for breach of a material term the party alleging a breach – whether landlord or tenant – must inform the other party in writing:

- that there is a problem;
- that they believe the problem is a breach of a material term of the tenancy agreement;
- that the problem must be fixed by a deadline included in the letter, and that the deadline be reasonable; and
- that if the problem is not fixed by the deadline, the party will end the tenancy.

Where a party gives written notice ending a tenancy agreement on the basis that the other has breached a material term of the tenancy agreement, and a dispute arises as a result of this action, the party alleging the breach bears the burden of proof. A party might not be found in breach of a material term if unaware of the problem.

Section 31(3) of the Act states:

**(3)A tenant must not change a lock or other means that gives access to his or her rental unit unless the landlord agrees in writing to, or the director has ordered, the change.**

The tenant testified that he had a verbal authority from the landlords to remove the original door to the unit and replace it with one with a dog door. I find the evidence does not support this argument. I have reviewed the letter sent to the tenant on February 18, 2022 where the landlord asks the tenant to replace the exterior door with a dog door. I reviewed the second letter dated May 24, 2022, item 6 where the landlord repeats the door was replaced without the landlord's permission, replaced with an animal access door, allowing the dog to use the garden as a toilet all day long.

I find the tenant was aware that the landlord wanted the tenant to put the original door back. I also find, on a balance of probabilities, that the landlord did not give permission, verbal or otherwise, for the tenant to take off the original door and replace it with doggie door style door. As such, I find the tenant in breach of section 31(3) of the Act

I find that the landlord gave the tenant written warnings on 2 separate occasions, February 18<sup>th</sup> and May 24<sup>th</sup>, to put the original door back and the tenant failed to do so by the deadline of May 30<sup>th</sup>, the date the landlord would inspect to determine whether the 8 points in the May 24<sup>th</sup> letter was rectified. Based on the testimony of the parties, I understand that the original door was not put back by May 30<sup>th</sup>, a time frame I find reasonable.

Further, section 32(2) states:

**A tenant must maintain reasonable health, cleanliness and sanitary standards throughout the rental unit and the other residential property to which the tenant has access.**

I find that the tenant's failure to pick up the feces left by his dog in the yard constitutes a material term of the tenancy agreement that was not corrected within a reasonable time after the landlord gave him written notice to do so. The back yard is provided by the landlord as a place for the tenant to enjoy time outdoors, not as a place for his dog to defecate and leave uncollected. I accept the landlord's testimony that the uncollected dog poop is not only unsightly, but it is unsanitary as the odor would disrupt the landlord's quiet enjoyment of the property. Over and above this, based on the photographic evidence provided by the landlord, I also find that the dog's urine and feces has caused extraordinary damage to the property. I accept the landlord's testimony that the lawn would require a costly re-sodding to bring it back to a useable condition.

I find the tenant has caused extraordinary damage to the property. I find the tenant has breached a material term of the tenancy that was not corrected within a reasonable time after written notice to do so. For these reasons, I uphold the landlord's notice to end tenancy. The tenant's application is dismissed without leave to reapply.

Pursuant to section 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 have reviewed the landlord's notice to end tenancy and I find it complies with the form and content provisions of section 52. I grant the landlord an Order of Possession. As

the effective date stated on the notice to end tenancy has passed, I grant the landlord an Order of Possession effective 2 days after service upon the tenant.

The filing fee will not be recovered as this application was unsuccessful.

Conclusion

The application is dismissed without leave to reapply.

I grant the landlord an Order of Possession effective 2 days after service upon 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*.

Dated: December 07, 2022

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Residential Tenancy Branch