



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNC, FFT

### Introduction

On December 21, 2022, the Tenant submitted an Application for Dispute Resolution under the *Residential Tenancy Act* (“the Act”) seeking to cancel a One Month Notice to End Tenancy for Cause dated December 12, 2022, (“the One Month Notice”).

The Landlord and Tenant appeared at the hearing. The hearing process was explained and the participants were asked if they had any questions. Both parties provided affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and make submissions to me.

The Tenant confirmed he received a copy of the Landlords’ documentary evidence. I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

### Issue to be Decided

- Does the Landlord have sufficient cause to end the tenancy?

### Background and Evidence

The Tenant and Landlord agreed that their most recent tenancy agreement began on May 1, 2022, as a one-year fixed term tenancy that may continue on a month to month basis. Rent in the amount of \$1,250.00 is due to be paid to the Landlord by the first day of each month. The Tenant paid the Landlord a security deposit of \$625.00 and a pet damage deposit of \$625.00.

The Landlord served the One Month Notice to the Tenant by attaching it to the Tenant's door on December 12, 2022. The Notice has an effective date (the date the Tenant must move out) of January 31, 2023.

The Landlord selected the following reasons for ending the tenancy within the One Month Notice:

- *Tenant has not done required repairs of damage to the unit/site.*
- *Breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written Notice to do so.*

The One Month Notice provides information for Tenants who receive the Notice. The Notice provides that a Tenant has the right to dispute the Notice within 10 days after receiving it by filing an Application for Dispute Resolution at the Residential Tenancy Branch. If a Tenant does not file an Application within 10 days, the Tenant is presumed to accept the Notice and must move out of the rental unit or vacate the site by the effective date set out on page 1 of the Notice.

The Landlord posted the One Month Notice on the Tenants door on December 12, 2022. The Tenant disputed the One Month Notice on December 21, 2022, within the required time period.

The Landlord explained why he is seeking to end the tenancy. The Landlord stated that the Tenant has refused access for the Landlord to enter the rental unit and that the Tenant has not repaired damage to the rental unit in a reasonable amount of time.

On October 10, 2022, the Landlord attended the rental unit to perform maintenance when they observed damage to the rental unit door and door frame. The Landlord testified that the Tenant has a dog who has damaged the door and frame. The Landlord provided a photograph of the damage.

On November 17, 2022, the Landlord attended the rental unit and noticed that the damage to the door area had increased and grew concerned about the damage. The Landlord provided a photograph of the damage to the door and frame.

On November 19, 2022, the Landlord served a letter dated November 18, 2022 to the Tenant directing the Tenant to repair the damage by replacing the door and repairing the frame and drywall by December 5, 2022 or face further action including ending the tenancy. The Landlord provided a copy of the letter which includes "*your lease*

*agreement requires you to repair damages done by your pet. Please repair the following items back to their original condition....”*

The Landlord was asked why it would be necessary to repair the damage immediately and he replied that as the damage gets worse, it affects the structure of the house and may also exceed the amount of the security deposit and pet damage deposit. The Landlord testified that the Tenants dog also did damage to a mud-room area and provided photographs.

The Landlord testified that the Tenant replied to him that he did not intend to repair the door and that the repair would be completed before he moves out.

The Landlord stated that the door was not replaced, and the damage not repaired so the Landlord issued the One Month Notice.

The Landlord testified that the Tenant's dog is large and strong, and they require the Tenant's cooperation when they attend the rental unit. The Landlord testified that it is unsafe for them to enter the rental unit unless the Tenant is present and/or the dog is secured.

The Landlord submitted that the pet addendum agreement should be considered material terms relating to pet damages and the Tenants responsibilities. The Landlord provided a copy of the pet addendum agreement.

The Landlord testified that the Tenant was not cooperating with their requests to enter the unit for inspection and maintenance. The Landlord stated that the Tenant did not respond to their text message on October 24 and 25 requesting entry. The parties later agreed by text for an inspection on November 1 which was later changed to November 2, 2022; however, the Tenant changed his mind. On November 3, 2022 the Landlord posted a notice of entry for November 7, 2022 @5pm for the purpose of maintenance and inspection. The Landlord stated that the Tenant replied saying that he never agreed to monthly inspections and is refusing monthly inspections and that it would be a bad idea for the Landlord to enter the unit if the dog is not secured. The Landlord knocked on the door on November 7, 2022, but did not enter as they could hear that the dog was not secured.

On November 13, 2022 the Landlord issued a warning letter to the Tenant about refusal to allow entry into the unit, and also issued a new notice of entry for November 17, 2022. The Landlord entered the unit with the Tenant in attendance. The Landlord

provided a copy of the letter which includes: *“in the future, failure to provide us with safe access to your suite at the specified date and time may result in your inability to maintain a tenancy in the suite.”*

The Landlord submitted that the Tenant was not home to comply with a notice of entry for December 8, 2022 @4:30 pm, for the purpose of inspecting the repairs. The Tenant's dog was unsecured. The Tenant had responded to that notice stating that the repairs had not been completed. The Landlord provided a copy of the notice of entry.

On January 11, 2023, the Landlord issued a notice of entry to the Tenant to inspect the unit. The Landlord stated that the Tenant responded that he will not cooperate with the entry.

In response to the Landlord's testimony, the Tenant provided testimony acknowledging that his dog is responsible for damage to the door and frame. He testified that he works 8 -10 hours each day, and he cannot kennel his dog all day long.

The Tenant testified that the effort to fix the damage is not as much as suggested by the Landlord. He stated that he could replace the door in one hour. He stated that he knows how long it takes because he has already replaced this door previously due to damage from his dog. He stated that the Landlord never issued any notice to end tenancy related to the earlier damage.

The Tenant stated that he did agree to fix the door; however, the 17-day time period given by the Landlord was not reasonable being so close to Christmas and that he has recently been laid off from work. The Tenant stated that the Landlord did not give him a reasonable time period. He stated that the damage is not affecting the operation of the door and structure of the home. The Tenant stated that the Landlord may use the security deposit for the repair.

With regard to the notice of entry, The Tenant testified that the Landlord was aware that he does not get home from work until 5 -6 pm and that he did respond to the Landlord suggesting a later time. The Tenant stated that the Landlord never performed monthly inspections until they started asking in October 2022.

The Tenant testified that his dog is longer in the rental unit as it has been put down.

### Analysis

In the matter before me, the Landlord has the burden to persuade me that his reasons to end the tenancy are sufficient. Based on the evidence and testimony before me, I make the following findings:

Residential Tenancy Branch Policy Guideline #8 Unconscionable and Material Terms is intended to help the parties to an application understand issues that are likely to be relevant. The Guideline provides the following information:

*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.... 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.*

I find that the pet addendum agreement does not clearly set out that damage caused by a pet or failure to repair damage is material term of the tenancy giving the Landlord the right to end the tenancy. With regard to true intention of the parties, I note that previous damage to the door did not result in an eviction. Upon review of the Landlords' photographs of damage, I find that the damage is not extraordinary as I find it is not affecting the operation of the door or affecting the structure of the house. I find that there is very little possibility of the damage will get worse because the Tenant no longer has a dog.

While I find that the Tenant is responsible to repair the damage, I find that the Landlord's Notice requiring the door repair to be completed within 17 days is not a

reasonable period of time for the Tenant to complete the repairs. I find that a more reasonable period of time for the Tenant to make the needed repairs would be closer to 30 days.

With regard to the Landlord's right to enter the unit to perform maintenance or inspections, I find that the Landlord has the right to enter the unit after proper written notice and it is reasonable for the Landlord to conduct monthly inspections. While the Landlord may not have conducted regular inspection earlier in the tenancy, the Landlord has the right to do so. With regard to the Tenant's work schedule and the presence of his unsecured dog in the unit, where possible the parties should agree beforehand on reasonable times for entry. I accept the Tenant's statement that it is not humane to lock his dog up for the entire day while he is at work. It is reasonable to accept that the Landlord knew the Tenant's work hours.

I find that after the Landlord served the warning letter regarding entry to the Tenant along with a notice of entry for November 17, 2022, the Tenant complied with that entry notice.

The Notice of entry for December 8, 2022, for 4:30 pm was during the Tenant's work hours. I find that the Tenant replied to the Landlord's notice of entry for December 8, 2022, by replying that the repairs were not complete. There was no reason for the Landlord to proceed with entering the unit to check if the repairs were complete.

The Notice of entry for January 16, 2023, was served after the One Month Notice was served and did not form part of the basis for the Notice. I note that entry was scheduled between 11:00 am and 1:30 pm which would be during the Tenant's work hours.

I find that the Landlord has not provided sufficient evidence to persuade me that the tenancy should end due to a breach of a material term of the tenancy related to pet damage or a failure to make repairs by December 5, 2022.

With regard to the Landlord's right to enter the unit, I am mindful that since the dog is no longer present in the unit, there is nothing now preventing the Landlord from entering the unit after a proper written notice of entry is served.

I find that the Tenant is responsible to repair the damage to the door; frame and drywall caused by his dog. While the damage is not extraordinary as it does not affect the operation of the door or affect the integrity of the home, I find that the pet addendum agreement requires the Tenant to immediately pay for damage caused by a pet.

The Tenant is required to complete the repairs as soon as possible or pay the Landlord for the cost of having the door and frame repaired.

I find that the Landlord has not provided sufficient evidence to support the reasons to end the tenancy; therefore, I cancel the One Month Notice to End Tenancy for Cause, dated December 12, 2022.

Section 72 of the *Act* gives me authority to order the repayment of a fee for an application for dispute resolution. While the Tenant was successful with his application to cancel the One Month Notice, I find that the Tenant was not blameless in his behaviour that prompted the Notice. I decline to order the Landlord to repay the \$100.00 fee that the Tenant paid to make application for dispute resolution.

### Conclusion

The Tenant's application is successful. The One Month Notice issued by the Landlord dated December 12, 2022, is cancelled.

The tenancy will continue until 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: January 27, 2023

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Residential Tenancy Branch