



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing

## **DECISION**

Dispute Codes      CNC, OT, FFT

### Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- cancellation of the landlord's 1 Month Notice to End Tenancy for Cause (the 1 Month Notice) pursuant to section 47;
- another remedy not listed under the Act; and
- authorization to recover her filing fee for this application from the landlord pursuant to section 72.

At the outset of the hearing, I explained to the parties that as these hearings were teleconferences, the parties could not see each other, so to ensure an efficient, respectful hearing, this would rely on each party taking a turn to have their say. As such, when one party is talking, I asked that the other party not interrupt or respond unless prompted by myself. Furthermore, if a party had an issue with what had been said, they were advised to make a note of it and when it was their turn, they would have an opportunity to address these concerns. The parties were also informed that recording of the hearing was prohibited, and they were reminded to refrain from doing so.

All parties acknowledged these terms. As well, all parties in attendance provided a solemn affirmation. All parties acknowledged the evidence submitted and were given an opportunity to be heard, to present sworn testimony, and to make submissions. I explained the hearing and settlement processes to both parties. Both parties had an opportunity to ask questions. Both parties confirmed that they were ready to proceed with the hearing, they did not want to settle this application, and they wanted me to make a decision regarding this application. Neither party made any adjournment or accommodation requests. I have reviewed all oral and written submissions before me;

however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

Should the landlord's One Month Notice be cancelled? If not, is the landlord entitled to an Order of Possession?

Is the tenant entitled to another remedy not listed under the Act?

Is the tenant entitled to the recovery of the filing fee?

Background and Evidence

The landlord gave the following testimony. The tenancy began on December 1, 2007 with the rent of \$1020.16 due on the first of each month. The landlord issued a One Month Notice to End Tenancy for Cause on September 28, 2022 for the following reason:

***Landlord's notice: cause***

***47 (1) A landlord may end a tenancy by giving notice to end the tenancy if one or more of the following applies:***

***(h) the tenant***

***(i) has failed to comply with a material term, and***

***(ii) has not corrected the situation within a reasonable time after the landlord gives written notice to do so;***

The landlord testified that the tenant signed a tenancy agreement that states no pets are allowed. The landlord testified that the tenant has a cat without permission. The landlord testified that all tenants are aware that no pets are allowed in this building. The landlord testified that she gave the tenant written notice to remove the cat within 5 days or she would seek eviction. The landlord testified that the tenant kept the cat. The landlord testified that the tenant hasn't provided enough proof to show that a cat is a comfort animal, and even if she did, she would still not allow pets.

The tenant gave the following testimony. The tenant testified that she got the cat in the spring of 2020 as a comfort animal for her daughter who is suicidal and has mental health issues. The tenant testified that the landlord allowed her to have pets during her

tenancy that included birds and a gerbil. The tenant testified that when the landlord gave her written notice to remove the cat, she inquired if it would make a difference about her tenancy, the tenant stated that the landlord told her “no, I’ll still evict you”.

### Analysis

When a landlord issues a notice under Section 47 of the Act they bear the responsibility in providing sufficient evidence to support the issuance of that notice. In the matter before me, I find that the landlord has not done that for the following reasons. The landlord had the tenant sign a “no pet” clause in their original tenancy agreement but later allowed her to have pet birds and a pet gerbil. Even when the landlord had all tenants sign an updated no pet addendum to their existing tenancy agreements in 2018, the landlord allowed the tenant to keep the birds and the gerbil.

In addition, the tenant testified that she asked the landlord that if it would make a difference if she got rid of the cat and was advised that it wouldn’t and she would be evicted anyways; the landlord did not dispute this claim by the tenant.

Residential Tenancy Policy Guideline 28 addresses the issue of pets as follows:

*Sometimes a tenancy agreement will contain what is commonly referred to as a "pets clause" prohibiting the tenant from keeping pets or animals generally or from keeping pets of a certain size, kind or number or setting out the tenant's obligations regarding the keeping of the pet. When a landlord feels that a tenant is breaching a pets clause by having an animal on the premises, it is not uncommon for the landlord to give the tenant a written notice to get rid of the pet. If the tenant fails to do so within a reasonable time, the landlord might give the tenant a notice to end the tenancy claiming that the tenant has breached a material term of the tenancy agreement and failed to rectify the breach within a reasonable time after being given written notice to do so 1. Alternatively, the landlord might apply for an order that the tenant comply with the tenancy agreement 2. If a tenant chooses to dispute the landlord's notice to end the tenancy or opposes the landlord's application to comply, the matter will come before an arbitrator who will determine, in the case of a notice to end the tenancy, whether the pets clause in the tenancy agreement is a "material term" of the tenancy agreement. In the case of an application for an order that the tenant comply with the tenancy agreement, the arbitrator will determine whether the pets clause is an enforceable term of the tenancy agreement. In making that determination, an arbitrator will be governed by three factors: that the term is not inconsistent with the Residential Tenancy Act, the Manufactured Home Park Tenancy Act, or their respective Regulations, that the term is not*

*unconscionable, and that the term is expressed in a manner that clearly communicates the rights and obligations under it. 3. The question of whether or not a pets clause is a material term of the tenancy agreement will depend upon what the parties intended to be the consequence of a breach of the clause. The tenancy agreement itself may designate the pets clause to be a "material term". While that is an important indication, it is not always conclusive. Generally speaking, if the wording of a pets clause captures even trivial breaches which a reasonable person wouldn't expect would justify ending a tenancy, the pets clause may be found not to be a material term by an arbitrator. The question of whether or not a pets clause is "unconscionable" involves a number of factors too detailed to outline here.*

*In some cases a landlord may know of a pet being kept by a tenant in contravention of a pets clause and do nothing about it for a period of time. The landlord's mere failure to act is not enough to preclude him or her from later insisting on compliance with the pets clause. However, a delay may indicate that the pets clause is not considered by the landlord to be a material term of the tenancy agreement. As well, if a landlord is aware of the breach of a pets clause and does not insist on compliance and does something which clearly indicates that the pet is acceptable, the landlord may be prohibited from ending the tenancy for that breach. This is called "waiver". It is important to note that it is not a waiver of the pets clause itself, but only a waiver of the landlord's right to terminate the lease for that particular breach. Where a landlord makes a clear representation to the tenant that the pet is acceptable, the landlord may later be prevented from claiming the pets clause has been breached.*

I find that the landlord has been inconsistent in their pet policy and cannot now try to enforce rules that they have relaxed with existing tenants. The landlord cannot shapeshift the pet policy at her discretion or whim, accordingly, I hereby cancel the One Month Notice to End Tenancy for Cause dated September 28, 2022, it is of no effect or force.

The tenant applied for "other remedy" not listed in the Act, but was silent on that point, accordingly; I dismiss that portion of her application.

The tenant is entitled to a one time rent reduction of \$100.00 for the rent due March 2023 for the full recovery of the filing fee for this application.

Conclusion

The One Month Notice to End Tenancy for Cause dated September 28, 2022 is cancelled. The tenancy continues.

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: February 13, 2023

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Residential Tenancy Branch