



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing

## DECISION

**Dispute Codes**      CNC RP FFT

### **Introduction**

This hearing dealt with the tenants' 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.
- an order to the landlord to make repairs to the rental unit pursuant to section 33; and
- authorization to recover the filing fee for this application from the landlord, pursuant to section 72 of the *Act*.

JM and BM represented the landlord in this hearing. Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another.

Pursuant to Rule 6.11 of the RTB Rules of Procedure, the Residential Tenancy Branch's teleconference system automatically records audio for all dispute resolution hearings. In accordance with Rule 6.11, persons are still prohibited from recording dispute resolution hearings themselves; this includes any audio, photographic, video or digital recording. All parties confirmed that they understood.

During the hearing, the parties confirmed that the tenants' unit number was not noted on the application. As neither party was opposed, the tenants' application was amended to include the unit number of the rental unit.

The landlord confirmed receipt of the tenants' application ('Application'). In accordance with section 89 of the *Act*, I find that the landlord duly served with the Application. All parties confirmed receipt of each other's evidentiary materials.

As the tenants confirmed receipt of the 1 Month Notice dated October 31, 2022, which was personally served on the tenants on that date, I find the 1 Month Notice duly served in accordance with section 88 of the *Act*.

The tenant confirmed that the blinds have been repaired. Accordingly, this portion of the tenants' application is cancelled.

### **Issues**

Should the landlord's 1 Month Notice be cancelled? If not, is the landlord entitled to an Order of Possession?

Are the tenants entitled to recover the filing fee for this application?

### **Background and Evidence**

While I have turned my mind to all the documentary evidence properly before me and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of this application and my findings around it are set out below.

This fixed-term tenancy began on May 1, 2021, and continued on a month-to-month basis after April 30, 2022. Monthly rent is set at \$1,370.00, payable on the first of the month. The landlord holds a security deposit of \$675.00.

The landlord issued a 1 Month Notice to End Tenancy on October 31, 2022, providing following grounds:

1. The tenant or a person permitted on the property by the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord;
2. Breach of a material term of the tenancy agreement that was not corrected within a reasonable amount of time after written notice to do so.

The landlord's agents testified in the hearing that the main reason for why they are ending this tenancy is because the tenants have kept a pet guinea pig in the rental unit even though there is a strict no pet policy in the building. The landlord had entered the suite on October 27, 2021 after giving the tenants written notice that the landlord's contractor would be attending to prepare the suite for the blinds install. During the visit, the agent discovered that the tenants had a pet inside the suite, specifically a guinea pig. Photos were taken of the pet in the suite. The landlord testified that on December 3, 2021, the tenants were given written notice that the tenants had breached the tenancy agreement by keeping a pet in the suite. The landlord ordered that the tenants comply with the tenancy agreement by removing the pet by January 3, 2022, and that failure to

do so could result in eviction. The landlord submitted a copy of the letter in their evidentiary materials.

On June 8, 2022, the landlord performed a follow up inspection to confirm that the pet had been removed. The landlord testified that the tenants moved the guinea pig back into the suite after this, as confirmed on August 31, 2022.

The landlord testified that the building had a strict no pet policy, which was communicated to the tenants, and the tenants had agreed to this as noted on the tenancy agreement. The landlord testified that they have received numerous complaints about bad odours from the suite due to the pet and the feces, which is a cause of disturbance for other tenants in the building. The landlord denies that permission was ever given to the tenants to have any pets.

The tenant does not deny that they have a pet guinea pig in the suite. The tenant testified that the previous property manager had given the tenants verbal permission to do so, stating that "small pets are allowed". The tenant also noted that they would not be able to move out as the elevator is not functioning, and as a result would create a hardship for the tenant if they had to move out. The landlord responded that they would assist with the move if the elevator was still not functioning.

### **Analysis**

Section 46 of the *Act* provides that upon receipt of a notice to end tenancy for cause the tenant may, within ten days, dispute the notice by filing an application for dispute resolution with the Residential Tenancy Branch. As the tenants filed their application within the required period, and having issued a notice to end this tenancy, the landlord has the burden of proving they have cause to end the tenancy.

It is undisputed by the tenants that they have kept a pet guinea pig in the rental unit, and as of the hearing date, they still had the pet despite the warning letter and the issuance of the 1 Month Notice.

The landlord argued that by keeping the pet, they were in breach of a material term of the tenancy agreement. The tenant argued that they had permission to have the pet from the previous property manager. I find that despite the testimony of the tenant, the tenant failed to provide sufficient evidence to support that they were ever given permission to have any kind of pet in the rental unit. I find that the tenancy agreement clearly states that no pets are allowed, which the tenant had agreed to by signing the tenancy agreement.

I must now consider whether the tenants had breached a material term of the tenancy agreement, and whether the tenants had corrected this breach within a reasonable amount of time after being given written notice to do so. A party may end a tenancy for the breach of a material term of the tenancy but the standard of proof is high. To determine the materiality of a term, an Arbitrator will focus upon the importance of the term in the overall scheme of the Agreement, as opposed to the consequences of the breach. It falls to the person relying on the term, in this case the landlord, to present evidence and argument supporting the proposition that the term was a material term. As noted in RTB Policy Guideline #8, 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. The question of whether or not a term is material and goes to the root of the contract must be determined in every case in respect of the facts and circumstances surrounding the creation of the Agreement in question. It is entirely possible that the same term may be material in one agreement and not material in another. Simply because the parties have stated in the agreement that one or more terms are material is not decisive. The Arbitrator will look at the true intention of the parties in determining whether or not the clause is material.

Policy Guideline #8 reads in part as follows:

*To end a tenancy agreement for breach of a material term the party alleging a breach...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...*

As noted above, I am not satisfied that the tenants were ever given permission to keep any pets in the rental unit, whether this permission is explicit or implied. I am satisfied that the tenancy agreement was signed by the tenants, and that they understood that keeping a pet was not allowed. I do note, however, the specific requirements for ending a tenancy for a material breach as specified in Policy Guideline #8, as noted above. Although the landlord did serve the tenants with the breach letter, which did indicate that the tenants had to fix the breach by a deadline, the letter does not clearly state that by keeping the pet, the tenants were breaching a material term of the tenancy agreement. There is no reference to a “material breach” in the letter, which is a requirement for

ending the tenancy on this ground. For this reason, I am not satisfied that the landlord has grounds for ending this tenancy on the grounds of a material breach.

The second ground on the 1 Month Notice for ending this tenancy is that “The tenant or a person permitted on the property by the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord”. In this case, the evidence falls short. Although the landlord testified to multiple complaints from other tenants, the landlord did not provide any sufficient evidence to support the details of these complaints. The landlord did not call any witnesses to confirm these complaints, nor did the landlord provide sufficient documentation to establish that the specific details as to when and how the tenant had unreasonably disturbed other tenants or the landlord. In the absence of this evidence, I find that the landlord has failed to sufficiently support that the tenants had significantly interfered with, or unreasonably disturbed another occupant or the landlord.

As noted above, the onus is on the landlord to support that they have grounds to end this tenancy for the reasons provided on the 1 Month Notice. In this case, I am not satisfied that the landlord has provided sufficient evidence to support that the tenancy should end on the grounds provided. Accordingly, I allow the tenants’ application to cancel the 1 Month Notice dated October 31, 2022. The 1 Month Notice is cancelled, and is of no force or effect. The tenancy will continue until ended in accordance with the *Act*.

As the tenants were successful with their application, I allow the tenants to recover the filing fee.

### **Conclusion**

The landlord’s 1 Month Notice to End the Tenancy dated October 31, 2022 s cancelled and is of no force or effect.

I allow the tenants to implement a monetary award of \$100.00, by reducing a future monthly rent payment by that amount. In the event that this is not a feasible way to implement this award, the tenants are provided with a Monetary Order in the amount of \$100.00, and the landlord must be served with **this Order** as soon as possible. Should the landlord fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court.

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: April 06, 2023