



# Dispute Resolution Services

Residential Tenancy Branch  
Ministry of Housing and Social Development

## Dispute Codes:

CNC and MT

## Introduction

This hearing was scheduled in response to the Tenant's Application for Dispute Resolution, in which the Tenant has made application to set aside a Notice to End Tenancy and for more time to apply to cancel a Notice to End Tenancy.

Both parties were represented at the hearing. They were provided with the opportunity to submit documentary evidence prior to this hearing, all of which has been reviewed, to present relevant oral evidence, to ask relevant questions, and to make relevant submissions to me.

## Issue(s) to be Decided

The issue to be decided is whether the Notice to End Tenancy for Cause, served pursuant to section 47 of the *Residential Tenancy Act (Act)*, should be set aside, and whether the time limit for applying to set aside that Notice to End Tenancy should be extended.

## Background and Evidence

The Property Manager and the Tenant agree that the tenancy in this particular rental unit began on March 01, 2006.

The Landlord submitted a copy of the tenancy agreement, which was signed by the Tenant and the Property Manager. Section 12(c) of Addendum A of the tenancy agreement states that “No dogs are permitted on the premises (excluding registered aid dogs). Sections 12(a) and 12(b) of Addendum A make reference to having “continuous charge” of other pets. The Property Manager stated that she personally reviewed this term of the tenancy agreement with the Tenant, and that the Tenant initialled the term to indicate that she understood. The Tenant stated that she understood that she was not allowed to have a dog living with her, but she did not understand that she was not allowed to have a dog visit.

The Property Manager and the Tenant agree that a 1 Month Notice to End Tenancy for Cause was posted on the front door of the rental unit on January 09, 2009. The Notice indicated that the Tenant was required to vacate the rental unit on February 28, 2009. The reason stated for the Notice to End Tenancy was that there has been a breach of a material term of the tenancy agreement that was not corrected within a reasonable time after being given written notice to correct the breach, which is grounds to end a tenancy pursuant to section 47(1)(h) of the *Act*.

The Notice to End Tenancy informed the Tenant that she must move out of the rental unit by February 28, 2009 unless she files an Application for Dispute Resolution within ten days of receiving the Notice. In these circumstances, the Tenant had until January 22, 2009 to dispute the Notice. The Tenant did not file an Application for Dispute Resolution seeking to set aside the Notice until February 02, 2009 and she is now seeking an extension of the time limit established by section 47(4) of the *Act*.

In support of her application to extend the time limit established by section 47(4) of the *Act*, the Tenant stated that she has several significant medical issues that interfered with her ability to meet the legislated time limit. She stated that she suffers from agitated depression, degenerative arthritis, severe anxiety, agoraphobia, suicidal thoughts and that her medications interfere with her concentration. She submitted a medical report to corroborate her statement that she suffers from agitated depression, degenerative arthritis, and that she is taking several medications.

The Caretaker stated that he spoke with the Tenant twice in August, at which time he advised her that she was not permitted to have a dog in her rental unit.

The Landlord submitted a letter, dated September 18, 2008, which the Property Manager contends was mailed to the Tenant. That letter clearly advises that the Tenant

is not permitted to have a dog on the residential property at any time, unless it is a registered guide dog. The Tenant stated that she did not receive this letter until October 08, 2009 when it was personally delivered to her.

The Landlord submitted a letter, dated October 08, 2008, which the Property Manager contends was mailed to the Tenant. This letter clearly reminds the Tenant of the terms of the tenancy agreement regarding dogs and specifically advises the Tenant that visitors are not permitted to bring dogs onto the premises. The Tenant acknowledges receiving this letter.

The Caretaker stated that he observed the Tenant with a dog on the premises on January 09, 2009, and he heard a dog inside the rental unit when he served the Notice to End Tenancy on that date.

The Tenant does not deny that she periodically has a dog in her rental unit. She contends that the dog is very therapeutic for her and she submitted a note from her physician, who states that he believes an aide dog is a valuable asset for the Tenant's emotional well being. She asks that she be permitted to continue to have the dog visit with her at her rental unit due to her extenuating medical circumstances.

The Tenant acknowledged that the dog that is the subject of this dispute is not registered with the Canada Dog Guide Foundation and that it is not qualified to receive a guide dog designation. She stated that she is attempting to have the dog certified by the Pacific Animal Therapy Society, although she submitted no evidence from that Society that would cause me to conclude that such a certification will be forthcoming.

The Tenant stated that she will be unable to find affordable housing if her tenancy is ended.

### Analysis

Section 66(1) of the *Act* authorizes me to extend the time limit to apply to set aside a Notice to End Tenancy only in exceptional circumstances. The word "exceptional" implies that the reason for failing to meet the legislated time lines is very strong and compelling. In the circumstances before me, I find that the Tenant has significant medical issues that impaired her ability to dispute the Notice to End Tenancy within 10 days of receiving the Notice. On this basis, I am extending the time limit to apply to set aside the Notice to End Tenancy, and I will consider the merits of the Notice to End Tenancy that was posted on January 09, 2009.

I find the tenancy agreement stipulates that dogs are not permitted on the premises. I find that this term of the tenancy agreement was specifically discussed with the Tenant at the beginning of the tenancy, as the Tenant initialled this term of the tenancy agreement. Although the Tenant alleges that she did not understand that she was not

allowed to have dogs visit her rental unit, I find that the condition is clearly outlined in the tenancy agreement. I note that the tenancy agreement differentiates between dogs and other pets. It prohibits Tenants from having “continuous possession” of some pets, which implies that those pets can visit on the premises, but it specifically states that dogs are not permitted on the premises, which, in my view, clearly means that they cannot visit. I find that this is a material term of the tenancy agreement.

I find that on October 08, 2008, the Tenant was given written notice that she was not permitted to bring dogs onto the premises. I find that she was advised that her tenancy would be terminated if she continued to breach this term of her tenancy agreement. I find this directive was clear and direct, and that the Tenant should have clearly understood that she was not to have a dog in her rental unit.

I find that the Tenant continued to bring a dog onto the premises after she received the written notice, dated October 08, 2009, which clearly advised that she was not to have dogs visiting at her rental unit. It is apparent that the Tenant does not intend to comply with this specific term of her tenancy agreement, as she indicated that she wishes to have this dog certified as a companion dog in the hopes that it would be permitted on the premises. As I have insufficient evidence that the dog that is the subject of this dispute has, or is about to receive, certification as a “registered aid dog”, a “guide dog”, or a “therapeutic dog”, I can not conclude that this dog should be permitted on the residential property.

I find that the Tenant has failed to comply with this material term of the tenancy agreement and that she has not corrected the situation after being given written notice of her obligation to comply. On this basis, I find that the Landlord has grounds to end this tenancy, pursuant to section 47(1)(h) of the *Act*.

I find that I am not able to consider the financial status of the Tenant when determining if this tenancy should end, as the legislation does not permit me to set aside a Notice to End Tenancy on the basis of financial hardship.

### Conclusion

As I have determined that the Landlord has satisfied the legislative requirements to end a tenancy for cause, I am dismissing the Tenant’s application to set aside the One Month Notice to End Tenancy and I will grant the Landlord an Order of Possession, as requested at the hearing, that will be effective on March 31, 2009.

Date of Decision: March 9, 2009