



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding Metro Vancouver Housing Corporation  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      CNC, FF

### Introduction

This was a hearing with respect to the tenants' application to cancel a one month Notice to End Tenancy for cause. The hearing was conducted by conference call. The landlord's representative attended with an observer the male tenant attended and was joined by his wife partway through the hearing.

### Issue(s) to be Decided

Should the Notice to End Tenancy for cause dated June 22, 2016 be canceled?

### Background and Evidence

The rental unit is a townhouse apartment in the landlord's housing complex in Vancouver. The tenancy began on March 1, 2013. The tenants paid a \$480.00 security deposit and a \$480.00 pet deposit at the start of the tenancy. The current monthly rent is \$1,025.00.

The landlord served the tenants with a one month Notice to End Tenancy for cause dated June 22, 2016. The Notice was served by posting it to the door of the rental unit. The Notice to End Tenancy required the tenants to move out of the rental unit by July 31, 2016. The stated reasons for giving the Notice were that the tenants have significantly interfered with or unreasonably disturbed another occupant or the landlord; that they have seriously jeopardized the health or safety or lawful right of another occupant or the landlord and that the tenants have breached a material term of the tenancy agreement.

On June 30, 2016 the tenants applied to dispute the Notice to End Tenancy. The landlord's representative testified that the tenancy agreement and addendum contains provisions with respect to pets. The agreement requires the landlord's consent to have

a pet. The tenants obtained permission to have a pet cat when the tenancy commenced. The landlord submitted documents to show that in August, 2014 the tenants applied for approval for their pet dog. In the application form it was described as a Lab- Mastiff cross, 11 months old with an approximate adult weight of 45-50 lbs. The landlord's representative responded to application by letter dated September 15, 2014. She said in the letter that:

Our Pet Policy states that the maximum body weight of a pet must not exceed 40 lbs. at maturity, and must be of a breed that is acceptable to the corporation.

Therefore, because the dog does not meet the requirements stipulated in the Pet Policy, I must refuse your application, and ask that you find another home for your dog no later than October 3, 2014.

The landlord's representative testified that she was unaware that the tenants continued to keep the dog after the September 2014 refusal until May, 2016 when the landlord received a complaint from Canada Post that the tenants' dog was interfering with mail delivery by banging against the door of the rental unit when the postman was delivering mail to the rental unit. The landlord wrote a letter to the tenants warning them to adhere to their responsibilities as pet owner.

The landlord submitted a copy e-mail communication dated June 2, 2016 wherein it was reported that a large black dog was running loose in the rental complex. According to the e-mail, the male tenant acknowledged that it was his dog and he would ensure that it was leashed at all times. The author of the e-mail, an employee of the landlord, described the dog as a large 50-60 lb pit-bull cross. The landlord gave the tenants a letter dated June 2, 2016. The landlord said in the letter that it would not permit the tenants to keep the dog, whether or not it was registered because it is a restricted breed. The landlord requested confirmation before June 20, 2016 that the dog is no longer living in the rental unit.

According to the landlord's representative, the tenants told her that they had no intention of getting rid of their dog. The landlord sent a letter confirming the tenants' refusal to remove the dog and served the tenants with the Notice to End Tenancy for cause.

The tenant testified at the hearing that they adopted the dog after their pet cat died. The tenant said the dog has lived in the rental unit with no issues for the past 2 ½ years. The tenant said the dog is friendly and plays with children. He described it as a "black Lab mix" and said it weighed 40 lbs and was 21" tall at the shoulder. The tenant denied

that his dog has been off leash. He said that the tenant will not agree to get rid of the dog. The tenant filed his application to dispute the Notice to End Tenancy on June 30, 2016. He did not submit any documentary or photographic evidence in response to the landlord's evidence. The tenant did not submit a picture of the dog to support his testimony.

The tenants have not paid rent for August. The tenant said that he is ready to pay the rent but has not done so because they will need the funds to move if the Notice is upheld.

### Analysis

The landlord has claimed that the tenants have significantly interfered with or unreasonably disturbed other occupants and have seriously jeopardized the health or safety of other occupants. The landlord's evidence concerning these grounds consists of a report from a Canada Post employee and a report from the landlord's employee that the tenants' dog was off-leash in the housing complex. I did not hear direct testimony from any of the individuals with actual knowledge of the alleged incidents. I find that there is insufficient evidence to show that the tenants have significantly interfered with or unreasonably disturbed other occupants of the rental complex.

The landlord has also alleged that the tenants' continued possession of the dog in the rental unit constitutes a material breach of the tenancy agreement. The agreement provides that the landlord's consent for a specific pet is required before the tenant will be allowed to have a pet. The landlord has established a policy with respect to pets that limits the size of dogs and the breeds that are acceptable. Unacceptable breeds include Pit Bull Terrier Staffordshire Bull Terriers, Rotweiler and mixed breed dogs with dominant features of these breeds. In his application for dispute resolution the tenant described the dog as a 40 lb Lab cross. The report from the landlord's supervisor described the dog as a large, 50 to 60 lb Pit Bull cross.

There is a marked discrepancy between the description of the tenants' dog given by the landlord's employees and that provided by the tenant. The tenant's description of the dog as stated in the application for dispute resolution also differs from the description provided by the tenants in their August 2014 application to have the dog approved. In their application for approval the dog, then 11 months old was said to be 45 to 50 lbs and a Lab, Mastiff cross. The landlord's representative said that the dog is part mastiff, a breed not approved by the landlord, although this is not one of the prohibited breeds named in the landlord's pet policy. The dog has been identified by the landlord's employee as a Pit Bull cross and substantially larger than the tenant's statement in the

application for dispute resolution. The landlord has notified the tenants that it considers the presence of the dog in the rental unit to be a breach of the tenancy agreement. The landlord has given the tenants several opportunities to remove the dog. The tenants have stated that they have no intention of removing the dog.

The tenants have had ample opportunity to provide photographs to show the nature and size of the dog before the hearing of this matter. They were notified in 2014 that the dog was not approved and they ignored the landlord's letter. I draw an adverse inference from the tenant's failure to provide documentary evidence including photographs concerning the dog, its breed and its size in response to the landlord's evidence. I find, on a balance of probabilities, that the dog exceeds the size requirements set by the landlord and that it is of a mixed breed that is not allowed under the landlord's pet policy. I note that the tenant's statement about the dog set out in the application for dispute resolution, contradict his own evidence contained in the 2014 application to have the dog approved by the landlord.

The landlord has published a pet policy consistent with the terms of the tenancy agreement that apply to the rental complex. I find that the pet provisions are material terms of the tenancy agreement. The landlord has refused to approve the tenants' dog. The landlord has given the tenants written notice to rectify the breach of the tenancy agreement. The tenants have refused to do so and I find that they have breached a material term of the tenancy agreement by keeping the dog despite the landlord's written refusal. Based on my finding that the tenants are in breach of a material term of the tenancy agreement, I dismiss their application to cancel the Notice to End Tenancy without leave to reapply.

Section 55(1) of the *Residential Tenancy Act* provides that:

- 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.

The Notice to End Tenancy given by the landlord is in the proper form and complies with the provisions of section 52 of the *Act*. The tenant's application has been dismissed and the effective date of the Notice to End Tenancy has passed. I therefore grant the landlord an order of possession effective two days after service on the tenants. This order may be filed in the Supreme Court and enforced as an order of that court.

Conclusion

The tenants' application has been dismissed. The landlord has been granted an order of possession.

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: August 15, 2016

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Residential Tenancy Branch

