



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes

CNC OLC FF

### Introduction

This hearing was convened as a result of the Tenant's Application for Dispute Resolution. A hearing by telephone conference was held on July 16, 2018. The Tenant applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

- cancellation of the Landlord's 1 Month Notice to End Tenancy for Cause (the Notice) pursuant to section 47; and,
- an order requiring the Landlord to comply with the Act, regulation or tenancy agreement pursuant to section 62.

Both parties attended the hearing and provided testimony. All parties were provided the opportunity to present evidence orally and in written and documentary form, and to make submissions to me.

The Landlord did not submit any documentary evidence for this hearing. The Tenant stated that he personally served the Landlord's mother (who lives upstairs) with the Notice of Hearing and evidence on June 13, 2018. I note this is not an approved method of service under section 88, 89 and 90 of the Act. However, the Landlord stated she did receive the evidence and Notice of Hearing shortly after the Tenant dropped it off. I am satisfied the Landlord has been sufficiently served with the Notice of Hearing and evidence and that the Landlord had ample time to review and respond to the issues and evidence.

I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence submitted in accordance with the rules of procedure and evidence that is relevant to the issues and findings in this matter are described in this Decision.

### Preliminary and Procedural Matters

The Tenant applied for multiple remedies under the *Act*, a number of which were not sufficiently related to one another.

Section 2.3 of the Rules of Procedure states that claims made in an Application must be related to each other and that arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply.

After looking at the list of issues before me at the start of the hearing, I determined that the most pressing and related issues deal with whether or not the tenancy is ending. As a result, I exercised my discretion to dismiss unrelated matters, with leave to reapply, on the Tenant's application with the exception of the following claim:

- to cancel the 1 Month Notice to End Tenancy for Cause.

#### Issue(s) to be Decided

- Is the Tenant entitled to have the Landlord's 1 Month Notice cancelled?
  - If not, is the Landlord entitled to an Order of Possession?

#### Background and Evidence

The Tenant acknowledged receiving the Notice on May 28, 2018. The Landlord issued the Notice for the following reason:

Tenant or a person permitted on the property by the tenant has:

- seriously jeopardized the health or safety or lawful right of another occupant or the landlord.

Under the "Details of Cause" section the Landlord stated that "Children of the Landlord are allergic to cats, animals, tenant brings over many types of animals and kids have remained sick, missed school due to allergies. Tennat has been told no animals/pets allowed".

The Landlord stated that her sister, her kids, and her parents all live in the suite adjoining the Tenant's suite. The Landlord stated that her sister's two kids are 7 and 10 and have allergies. The Landlord stated that both kids who live at the house have been sick and have missed school because of their allergies. The Landlord stated that this is because of the animals the Tenant brings to the property.

The Tenant stated that the house has a rat problem and provided photos of the places where rats live in the walls and under the porch. The Tenant stated that this has been an ongoing issue and if the kids on the property are reacting to anything, it is likely the rats infesting the walls. The Tenant stated that he had a verbal agreement with the Landlord at the time he

moved in that he would store his pets (rabbit, and 3 doves for his magic shows) offsite at a storage facility but that he did work with these animals during the day. The Tenant stated that he is a magician and he trains animals to use in his shows. The Tenant stated that he has always stored his animals at another location and he will only ever bring the rabbit or the dove by for an hour during the day for training. The Tenant stated that he was upfront with this at the start of the tenancy and the Landlord was okay with this. The Tenant stated he was never given a written tenancy agreement.

The Tenant stated that days before getting the Notice, he was asked by the Landlord to move out because the Landlord's brother wanted to move in. However, the Tenant expressed that the Landlord could not do this because the Act does not allow a Landlord to end a tenancy for a brother to move in. The Tenant stated that a couple days later he got this one month notice based on "allergies", which he believes is fabricated.

### Analysis

In the matter before me, the Landlord has the onus to prove that the reasons in the Notice are valid.

I have reviewed the Notice issued by the Landlord and I find it meets the form and content requirements under section 52 of the Act. I note the Tenant received the Notice on May 28, 2018, and applied to dispute it on May 29, 2018. On the Notice and in the hearing, the Landlord is alleging that the Tenant and the animals he brings onto the property are causing allergic reactions in the two children who live upstairs.

After reviewing the evidence on this matter, I note the Landlord has provided no documentary evidence to substantiate any of the allergy issues. There is no medical evidence, showing the children are suffering from allergies, to what degree, nor is there evidence to link any potential allergies to the animals occasionally brought onsite by the Tenant. I also note there is no written tenancy agreement before me to show the Tenant is unable to bring any animals onsite for any amount of time. The Tenant stated that it is only ever temporary and for short times during the day. Regardless, I do not find the Landlords have sufficiently demonstrated and substantiated the reasons behind the Notice.

Given my findings on this matter, I find the Landlords have not established that there are sufficient grounds to end the tenancy. The Tenant's application is successful and the Notice received by the Tenant on May 28, 2018, is cancelled. I order the tenancy to continue until ended in accordance with the Act.

As the Tenant was successful with his application, I grant him the recovery of the filing fee against the Landlord. The Tenant may deduct the amount of \$100.00 from 1 (one) future rent payment.

Conclusion

The Tenant's application is successful. The Notice is cancelled.

The Tenant may deduct the amount of \$100.00 from one (1) future rent payment.

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: July 16, 2018

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Residential Tenancy Branch