



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding KIM GIN & SONS LTD.  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      CNC, FFT

### Introduction

Pursuant to section 58 of the *Residential Tenancy Act* (the Act), I was designated to hear an application regarding a residential tenancy dispute. On February 25, 2022 the tenant applied for:

- an order to cancel a One Month Notice to End Tenancy for Cause, dated February 22, 2022, (the One Month Notice); and
- the filing fee.

The hearing was attended by both the tenant and the landlord. Those present were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses; they were also made aware of Residential Tenancy Branch Rule of Procedure 6.11 prohibiting recording dispute resolution hearings.

The tenant testified that she served the Notice of Dispute Resolution Proceeding (NDRP) on the landlord by registered mail on March 11, 2022, and her evidence in person on May 25, 2022. The landlord confirmed receiving the tenant's NDRP and evidence.

The landlord testified he served his responsive evidence on the tenant in person on May 18, 2022, and the tenant confirmed she received it.

### Issues to be Decided

- 1) Is the tenant entitled to an order to cancel the One Month Notice, and if not, is the landlord entitled to an order of possession?
- 2) Is the tenant entitled to the filing fee?

### Background and Evidence

Those present agreed on the following particulars of the tenancy. It began April 15, 2016; rent is \$898.00, due on the first of the month; and the tenant paid a security deposit of \$400.00, which the landlord still holds.

A copy of the One Month Notice was submitted as evidence. The landlord testified he served the One Month Notice on the tenant in person on February 22, 2022; the tenant testified she received the Notice on February 22, 2022, after it had been slipped beneath her door.

The One Month Notice is signed and dated by the landlord, gives the address of the rental unit, states the effective date, states the reasons for ending the tenancy, and is in the approved form.

The One Month Notice indicates the reason for the Notice is that the tenant breached a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.

The Details of the Events section of the One Month Notice refers to the tenant having had cats for almost five years, without the landlord's consent and despite a "verbal material no pets term in the tenant's tenancy agreement."

The landlord testified that he has been the landlord of the building for eight years, and that for 50 years the building has not allowed pets. The landlord testified that when the tenant moved in she had no pets, and that when he noticed the tenant's cats, around January 2022, he was surprised, and spoke to the tenant about the building's no-pets policy. The landlord testified that he served the tenant with a breach letter on February 1, 2022, then with a second breach letter. The two letters are submitted as evidence; the second is dated February 8, 2022.

The landlord testified that when he shows suites to prospective tenants, he always tells them that it is a pet-free building. The landlord testified that when he was showing the tenant the unit, he told her it was a pet-free building.

The landlord testified that it says "no pets" on the tenancy application, and submitted a copy as evidence. The landlord testified that the tenant knew at the beginning of the tenancy that the building was pet-free as he told her and because she signed the application.

The tenant testified that the application form was in her possession for about a minute as she completed it during a walkthrough of the unit with the landlord, and that she did not notice it said "no pets." The tenant testified that at the beginning of the tenancy the landlord did not tell her it was a pet-free building. The tenant testified that she did not intend to agree to having no pets when she moved into the unit.

The landlord testified that it says "no pets" on the front of the building, and submitted photos in support. The tenant testified she did not notice the "no pets" sign at the front of the building until later in her tenancy.

The landlord submitted as evidence a letter from another tenant, dated April 15, 2022, in which that tenant states she "found some possibly cat hairs from laundry," and seeks to confirm with the landlord it is an "absolutely pet-free building," as she is "badly allergic to cats," and has asthma. The letter also refers to that tenant smelling cigarette smoke in the building.

The landlord testified that the subject tenant always insists on being present when he is working on the unit, and that she has hidden the cats from him. The landlord testified that he has not seen any pets when he has been in the tenant's unit to do repairs.

The tenant testified that she brought the cats home in June 2017, and has not hidden them from the landlord, that he was aware of their presence, and that the landlord only raised the cats as a problem after the building owner saw them in the window and pressured the landlord to tell the tenant she may not have pets. The tenant testified that the landlord has been in her rental unit on his own many times to do repairs and maintenance without her present.

The tenant testified that hers is a small ground-floor studio unit, and submitted as evidence photos of the cats visible in the window and on the balcony. The tenant testified that the cats regularly perch in these visible locations for hours. The tenant submitted as evidence photos of a well-used scratching post attached to the dining table leg, as well as photos of food and water bowls on the floor, and a litter box. The tenant testified these items are visible to anyone entering the studio apartment, and that the landlord would have seen them, if not the cats, when visiting her unit.

The landlord testified that he respects his tenants' privacy, and that when he enters a unit to do work, he is focussed on the task at hand, and does not "look for evidence."

The tenant testified that on February 2, 2022, the landlord said he saw the cats several years ago, but at the time had no pressure to act.

The landlord testified that they seek to keep the building safe for tenants with allergies, and that cat hair was found in front of the subject tenant's unit, and cat litter found in the elevator.

A copy of the tenancy agreement is submitted as evidence; it is silent on pets, and both the tenant and the landlord agreed that the written tenancy agreement is silent on pets. The tenant testified there is no verbal component to the tenancy agreement.

### Analysis

Based on the testimony of those present, I find the landlord sufficiently served the tenant the One Month Notice on February 22, 2022, in accordance with section 71 of the Act, and that the tenant received it on the same day.

I find the One Month Notice meets the form and content requirements of section 52 of the Act, as it is signed and dated by the landlord, gives the address of the rental unit, states the effective date, states the reason for ending the tenancy, and is in the approved form.

As the One Month Notice was received by the tenant on February 22, 2022, in accordance with section 47(4) of the Act, the deadline to dispute it was 10 days later: March 4, 2022. As the Tenant applied to dispute the One Month Notice on February 25, 2022, I find she applied within the deadline.

Section 47(1)(h) of the Act states that a landlord may give notice to end the tenancy if the tenant has failed to comply with a material term, and has not corrected the situation within a reasonable time after the landlord has given written notice to do so.

Rule 6.6 of the Rules of Procedure states:

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim. In most circumstances this is the person making the application. However, in some situations the arbitrator may determine the onus of proof is on the other party.

For example, the landlord must prove the reason they wish to end the tenancy when the tenant applies to cancel a Notice to End Tenancy.

In this case, the onus is on the landlord to prove that the tenant has failed to comply with a material term, and has not corrected the situation within a reasonable time after the landlord has given written notice to do so.

The parties agree that the written tenancy agreement is silent on pets.

The landlord has provided affirmed testimony that he informs each prospective tenant that it is a no-pet building, that while showing the tenant the unit he informed her that it was a no-pet building, and has submitted on the notice to end tenancy that there is a “verbal material no pets term in the tenant’s tenancy agreement.”

The tenant has provided affirmed testimony that she did not intend to move into a building that did not allow pets, that at the beginning of the tenancy the landlord did not inform her it was a no-pets building, and that there is no verbal component to the tenancy agreement between the parties.

As the parties agree that the written tenancy agreement is silent on pets, I must determine if there exists a verbal component of the tenancy agreement between the parties which prohibits the tenant having pets.

The landlord submits that at the beginning of the tenancy the parties established a verbal agreement that the tenant may not have pets; the tenant states that pets were not discussed at the beginning of the tenancy. When two parties provide equally plausible versions of an event, the party bearing the onus to prove their claim must provide additional evidence to tip the balance in their favour. Beyond his affirmed testimony, the landlord has not provided further evidence to support his claim that the parties established a verbal component of the tenancy agreement that the tenant was not allowed to have pets.

Based on the evidence before me, and on a balance of probabilities, I find the landlord is not entitled to an order of possession because the landlord has failed to demonstrate that the tenant breached a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.

Therefore, the One Month Notice is cancelled.

Section 72 of the Act gives me the authority to order the repayment of a fee for an application for dispute resolution. As the tenant is successful in her application, I order the landlord to pay the \$100.00 filing fee the tenant paid to apply for dispute resolution.

Pursuant to section 72 of the Act, the tenant is authorized to make a one-time deduction of \$100.00 from a future rent payment in satisfaction of the above-noted award.

### Conclusion

The tenant's application is granted. The tenancy will continue until it is ended in accordance with the Act.

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: June 15, 2022

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Residential Tenancy Branch