

DECISION

Dispute Codes: CNC

This hearing dealt with an application by the tenant to cancel a notice to end tenancy for cause.

On May 1, 2005, the tenant began his tenancy. He is a smoker and has smoked in his unit since the inception of his tenancy. In May of 2007, a new set of tenants moved into the upstairs unit. Since then, the upstairs tenants have complained about cigarette smoke emanating from the tenant's unit. Both the upstairs tenants and the landlord have had several conversations with the tenant asking him to smoke outside. As a result, the tenant had put filters in the air ducts, used odour absorbent in every room and smoked outside as much as weather permitted. However, the upstairs tenants remained dissatisfied with the tenant's cigarette smoking.

On December 5, 2008, the landlord issued a letter warning the tenant to refrain from smoking inside the house or he would face eviction. The complaints from the upstairs tenants continued after this warning letter. On January 29, 2009 the landlord served the tenant with a notice to end tenancy on the grounds that the tenant has 1) significantly interfered with or unreasonably disturbed another occupant, and 2) seriously jeopardized the health or safety or lawful right of another occupant.

Both the landlord and the tenant agreed that there was no provision in the tenancy agreement to state that smoking was not permitted at the property. In a letter to the landlord dated February 5, 2009, the upstairs tenants complained about the smell of smoke and expressed concerns about the health risks associated with second hand smoke. I find the smell of smoke alone not to constitute any one of the enumerated grounds to end the tenancy. Furthermore,

no other supporting evidence was submitted to show that the upstairs tenants' health or safety has been jeopardized. I therefore find that the landlord has not established any ground to end the tenancy for cause.

I therefore cancel the landlord's notice to end tenancy dated January 28, 2009 and the tenancy is to continue.

Dated March 12, 2009.