



# Dispute Resolution Services

Residential Tenancy Branch  
Office of Housing and Construction Standards  
Ministry of Housing and Social Development

## Decision

Dispute Codes: ET

## Introduction

This matter dealt with an application by the Landlord for an order ending the tenancy earlier than it would end if the Landlord had to serve a One Month Notice to End Tenancy for Cause and wait for the applicable notice period to expire.

## Issue(s) to be Decided

1. Is the Landlord entitled to end the tenancy early?

## Background and Evidence

This tenancy started on March 28, 2009. There are 4 suites the rental property one of which is occupied by the Landlord. The Landlord said it is a term of the tenancy agreement that no smoking is allowed in the rental unit, however, she told the tenants they could smoke outside. The Landlord said there are no other tenants other than herself who smoke and that she only smokes outside with the fire door closed. The Landlord said early in the tenancy, she could smell a strong odor of cigarette smoke in the hallways and stairway and as a result, she gave the Tenants a verbal warning not to smoke in the rental unit.

The Landlord said she then received a written complaint from another tenant on April 4, 2009 that he could smell smoke in the entrance, stairway and hallway ever since the Tenants moved in. The Landlord said this elderly tenant has respiratory problems and relies on an oxygen tank all of the time. Consequently, on April 6, 2009, the Landlord gave the Tenants a written notice that smoking was not permitted in the rental unit. On this date the Landlord said she could smell a strong odor of smoke in the rental unit.

The Landlord argued that the Tenants then blocked the bottom of their door causing the second hand smoke to enter into her suite. The Landlord claimed that as a result of the Tenants' second hand smoke, she developed a cough and had trouble sleeping. The Landlord also claimed that she was unable to care for her granddaughter (who has respiratory issues) in her suite because of the second hand smoke. The Landlord provided list of times that she and two other tenants noticed the smell of smoke in the hallways. The Landlord also claimed that on April 17, 2009, she attended the rental unit with a realtor who could also smell a strong odor of cigarette smoke. The Landlord

claimed that previous tenants had not smoked in the rental unit and that it had been thoroughly cleaned at the beginning of the tenancy.

The Tenants admitted that they smoked in the rental unit prior to receiving a written warning but claimed that they smoked outside thereafter. The Tenants argued that when the Landlord smoked outside, she left a door open allowing smoke to enter the rental property (which the Landlord denied). The Tenants also argued that the Landlord was using their smoking as an excuse to enter their unit and invade their privacy. The Tenants noted that the Landlord left them a handwritten note dated April 12, 2009 that stated she would be inspecting the rental unit in 24 hours and every day thereafter for signs of smoking. The Tenants also disputed that the rental unit was cleaned at the beginning of the tenancy and claimed there was a strong smell of deodorizer at that time.

### Analysis

Section 56 of the Act says that a Landlord may apply to end a tenancy earlier than it would end if a Notice to End tenancy for cause under s. 47 of the Act had to be given. In order to succeed on such an application, the Landlord must show that one or more of the grounds set out in subsection 56(2) of the Act exists and that it would be unreasonable or unfair to have to wait for a Notice to End Tenancy under s. 47 of the Act to take effect.

In this case, I find on a balance of probabilities that the Tenants have been smoking in the rental unit in breach of a material term of their tenancy agreement and with the result that it has unreasonably disturbed another occupant or the Landlord. However, I also find that the conduct complained of is not so urgent that it warrants eviction on an expedited basis. Orders granted under s. 56 of the Act are reserved for those cases in which there is an imminent threat of danger to the person or damage to property. I do not find that those circumstances exist in this case. In other words, I find that the Landlord has not satisfied the 2<sup>nd</sup> part of the test under s. 56 of the Act that it would be unreasonable or unfair to wait for a notice under s. 47 of the Act to take effect. Consequently, the Landlord's application is dismissed and the tenancy will continue.

### Conclusion

The Landlord's application is dismissed.