

## **DECISION**

Dispute Codes      CNC, CNL, MNDC, MNSD, FF, O

### Introduction

This hearing dealt with the tenant's Application for Dispute Resolution to cancel a notice to end tenancy and for a monetary order.

The hearing was conducted via teleconference and was attended by the tenant and the landlord and her two agents.

At the outset of the hearing the tenant clarified that the compensation she was seeking was the equivalent of two month's rent and security deposit if the notice is to be upheld.

### Issues(s) to be Decided

The issues to be decided are whether the tenant is entitled to cancel a Notice to End Tenancy; to a monetary order for compensation for damage or loss; for all or part of the security deposit and to recover the filing fee from the landlord for the cost of the Application for Dispute Resolution, pursuant to sections 38, 47, 67, and 72 of the *Residential Tenancy Act (Act)*.

### Background and Evidence

The tenant submitted a copy of a partially completed Notice to End a Residential Tenancy dated March 7, 2010 with an effective end date of April 30, 2010 citing "smoking pot – caught by owner March 6, 2010 4:45 p.m.". The form has not included reference to any specific breach of the *Act* or of the tenancy agreement.

The tenant also submitted a copy of a drug test results dated March 17, 2010 showing negative results.

The landlord testified that the reason for issuing the notice to end the tenancy was because the landlord had knocked on the tenant's door and when it was opened there was a strong odour of pot.

The landlord's agent who issued completed the Notice had not realized there was a more current notice available at the time and could not provide an explanation why page

2 was not completed. The notice used was a Residential Tenancy Branch Appendix B – Notice to End a Residential Tenancy dated March 1999.

The landlord's agent testified the service of the notice was completed on March 7, 2010. The tenant did not dispute this statement. The landlord noted that the tenant had not filed her application within the legislated timeframes to dispute a notice to end tenancy, by submitting it on March 29, 2010.

### Analysis

The Notice to End a Residential Tenancy form used by the landlord requires the landlord to identify what type of notice is being given to the tenant (ie. 10 Day, 1 Month or 2 Month). Once the landlord does this the tenant then is informed, on the form, of the specific time frame they have to file an Application for Dispute Resolution.

Since the form used was not completed with this information, I find the tenant would not necessarily have been able to determine how long she had to make her application. As well, the notice itself quotes previous legislation and therefore the tenant was prejudiced in her ability to understand how to deal with or respond to the notice.

For these reasons and in accordance with Section 66 of the Act I find the tenant faced exceptional circumstances sufficient to justify an extension of the deadline for submitting her Application for Dispute Resolution.

Section 52 of the Act states that to be effective a notice to end tenancy must, among other things, state the grounds for end the tenancy and be given in the approved form. While the landlord contents that the grounds for ending the tenancy is that the tenant was "smoking pot", the landlord has failed to cite what part of the *Act* or tenancy agreement was breached.

As a result, I find that the landlord has failed to provide the tenant with a Notice to End tenancy that complies with Section 52.

### Conclusion

Based on the findings noted above, I authorize the tenant to cancel the notice to end tenancy issued on March 7, 2010 and find the tenancy in full force an effect. I dismiss the tenant's application for compensation as there is no evidence the tenant has suffered any damage or loss under the *Act*.

I also find the tenant is entitled to recovery of the **\$50.00** filing fee for this application and order that the tenant may deduct this amount from future rent due.

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: May 13, 2010.

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Dispute Resolution Officer