



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing and Social Development

## DECISION

Dispute Codes      CNC, FF

### Introduction

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

The hearing was conducted via teleconference and was attended by the tenant and the landlord's agent.

The landlord's witness called in at the start of the hearing, I asked the witness to provide contact information so I could call him into the hearing if we needed his testimony. During the hearing it was determined there was no need to call the witness in for testimony.

### Issues(s) to be Decided

The issue to be decided is whether the tenant is entitled to cancel a 1 Month Notice to End Tenancy for Cause and to recover the filing fee from the landlord for the cost of the Application for Dispute Resolution, pursuant to Sections 47, 67, and 72 of the *Residential Tenancy Act (Act)*.

### Background and Evidence

The tenancy began on June 15, 2007 as a month to month tenancy with a current monthly rent of \$1,711.00 due on the 1<sup>st</sup> of the month with a security deposit of \$850.00 paid.

The tenant submitted a copy of a 1 Month Notice to End Tenancy for Cause issued by the landlord dated September 8, 2010 with an effective vacancy date of October 9, 2010 citing the tenant or a person permitted on the property by the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord.

The landlord testified the tenant's neighbour had complained about the tenant smoking at her entrance door. The entrance door is at the end of the carport for the tenant's rental unit and the carport is attached to the neighbour's carport which in turn leads to the neighbour's entrance door.

The landlord confirmed there are no provisions in this tenant's tenancy agreement restricting smoking in or around a rental unit and that the complex itself is not deemed as non-smoking.

The landlord further stated that the neighbour complained about this tenant being verbally abusive and causing a disturbance to the neighbours threw yelling at the neighbours child and cat.

The landlord confirmed the tenant has been in the rental unit since June 2007 and that the neighbour moved into the next door unit in August 2009. The landlord confirms there have been no other tenants in the complex complaining about disturbances from this rental unit or tenant.

The landlord testified that he had tried to have the tenant change where she smoked and that the tenant had failed to change her smoking location and as such the notice was issued.

### Analysis

As the landlord has confirm that the entrance and carport where the tenant is smoking provides ingress and egress only to this tenant and that it is not common property and that there are no restrictions regarding smoking in the complex, I find the landlord cannot use the fact the tenant smokes in a location that is under her exclusive possession as part of the tenancy to end the tenancy.

While I don't doubt the neighbouring tenants have a strained relationship, arguments between neighbouring tenants do not necessarily constitute significant interference or unreasonable disturbance.

In relation to the landlord's assertion that the tenant has caused other disturbances against the neighbour and in light of the landlord's testimony that no one else has complained about this tenant in her 3 years of tenancy, I find, on the balance of probabilities, the tenant is unlikely to have caused disturbances to the neighbour.

Conclusion

Based on the above findings, I accept the tenant's assertion that the landlord does not have sufficient cause to end the tenancy and deem the 1 Month Notice to End Tenancy for Cause dated September 8, 2010 to be cancelled and I find the tenancy to be in full force and effect.

As the tenant was successful in her application I find the tenant is entitled to recovery of the filing fee of \$50.00 for her application. I order the tenant may deduct this amount from a future rent payment in accordance with Section 72(2)(a).

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: October 18, 2010.

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Dispute Resolution Officer