



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Ministry of Housing and Social Development

## DECISION

Dispute Codes      CNC FF

### Introduction

This hearing dealt with an Application for Dispute Resolution by the Tenant to obtain an Order to cancel a notice to end tenancy issued for cause, and to recover the cost of the filing fee from the Landlord for this application.

Service of the hearing documents, by the Tenant to the Landlord, was done in accordance with section 89 of the *Act*, served personally on November 1, 2010 at the rental unit. The Landlord confirmed receipt of the hearing package.

The parties appeared at the teleconference hearing, gave affirmed testimony, were provided the opportunity to present their evidence orally, in writing, and in documentary form. The Tenant confirmed receipt of the Landlord's evidence and confirmed that he did not submit evidence in support of his application.

### Issues(s) to be Decided

1. Was the 1 Month Notice to End Tenancy issued in accordance with the *Act*?
2. If not, is the Tenant entitled to an Order to cancel the Notice?

### Background and Evidence

I heard undisputed testimony that the parties entered into a fixed term tenancy agreement effective July 1, 2010 and set to expire June 30, 2011 at which time the Tenant is required to vacate the unit. Rent is payable on the first of each month in the amount of \$1,050.00 and the Tenant paid a security deposit of \$525.00 on May 9, 2010.

Throughout her testimony the Landlord referred to her documentary evidence which included among other things: her typed statement; a copy of the tenancy agreement; a copy of her advertisement for the rental unit which was used to acquire this Tenant; a letter from her doctor; copies of letters issued to the Tenant about smoking in and around the rental unit, e-mails to and from the Landlord with the *Residential Tenancy Branch*; a copy of a utility bill; a caution notice issued to the Tenant about cigarette smoke in the rental unit; a copy of the 1 Month Notice to End Tenancy issued October 26, 2010; three witness statements, and a copy of an e-mail received from the Tenant pertaining to an inspection by the Landlord.

The Landlord stated that she had been fooled by the Tenant as he had no smell of cigarette smoke on him when he attended to view the unit. She later found out that the leasing agent forewarned the Tenant that this was a non-smoking unit and that people in this city did not or were not tolerant of smokers. She acknowledged that she did not write "non-smoking" in the tenancy agreement however she advertised the unit including the following statements "Absolutely no smokers, This a smoke-free, environmentally friendly, Smokers need not apply" (Written as displayed in the advertisement). There is also a large sign posted on her door which states "smoke and drug free zone". When she first smelt cigarette smoke she stated she approached the Tenant about her concerns she asked if he was smoking with the door to the suite open and he just laughed this off saying it must be the wind blowing the smoke into the unit. Then on another occasion she knocked on the Tenant's door and when he opened it she could smell a strong smell of smoke coming from inside the unit. She said the Tenant moved outside and they carried on their conversation outdoors while he lit of a cigarette and smoked. She stated that she attempted to work with the Tenant to reach a mutual agreement to end the tenancy and he responded by saying he was not going to pay to move. When her attempts to mutually end the tenancy failed she offered the Tenant compensation of \$525.00 for him to move and he still refused. She stated there are several times scattered over different days and time throughout the late evenings when she can smell the smoke smell coming up into her living space through the furnace vents. She confirmed the furnace is located in the Tenant's suite so if there is smoke

smell on his clothes or if he smokes in the unit the smell will be drawn through the furnace vents when the furnace kicks in.

The Tenant testified and confirmed he noticed the no smoking sign on the door when he viewed the unit prior to entering into the tenancy agreement. He stated that he knew he was a smoker and that he does not smoke in his house in Quebec because his wife is a non-smoker. He stated that although he rented the unit as of July 2010 he did not arrive back from Egypt until September 2010 when he back to occupy the unit. He argues the witness statements were created by the Landlord's children and the one from her son indicates the smell of smoke since the summertime when the Tenant had not returned to the Country. The Tenant testified that he does not smoke in the rental unit and stated that he respects the Landlord and smokes only at the street and now she asks him to go for a walk when he smokes. He stated that he takes offence to the Landlord's statement about him being an aggressive person and claims the Landlord is lying about him smoking in the unit.

In closing the Landlord stated that she must sleep with her window closed now as the cigarette smoke comes into her bedroom. She has only witnessed the Tenant smoking at the end of the driveway however the smoke smell has been very strong during the late evenings which she states is indicative of the Tenant smoking inside the unit. She is concerned that with the onset of winter and cold weather that the Tenant will smoke inside the unit more often and that this will continue to affect her health in a negative manner. She had hoped to reach a mutual agreement to end the tenancy with the Tenant however if he chooses not to work towards a mutual agreement she requests that the *Residential Tenancy Branch* evict the Tenant as of December 15, 2010. She original requested to have the eviction effective November 30, 2010, however she wants to give the Tenant a reasonable amount of time to find a new unit. She asked that the Tenant agree not to smoke in or near the rental unit for the remaining time and that he empty the cigarette butt can weekly and noted that it has never been emptied since his arrival.

The Tenant provided closing remarks stating it is not his goal to end this tenancy as he finds this rental unit to meet his needs. He confirms it is a smoke free environment as he does not smoke inside the unit.

### Analysis

Upon review of the 1 Month Notice to End Tenancy issued October 26, 2010, I find the Notice to be completed in accordance with the requirements of the Act and I find that it was served upon the Tenant in a manner that complies with the Act.

The evidence supports that the Tenant knowingly created a deception by entering into a tenancy agreement for a unit that was advertised as a non-smoking unit and that stated "Smokers need not apply". Upon consideration of all the evidence and testimony presented to me, I find the Landlord took appropriate steps to attempt to resolve the matter and when that failed she had valid reasons for issuing the Notice. Therefore I dismiss the Tenant's application to cancel the Notice.

As the Tenant has not been successful with his application I decline to award him recovery of the filing fee.

Section 55 of the Act provides that an Order of Possession must be provided to a Landlord if a Tenant's request to dispute a Notice to End Tenancy is dismissed and the Landlord makes an oral request for an Order of Possession during the scheduled hearing. Therefore I approve the Landlord's request for an Order of Possession effective December 15, 2010.

I further Order the Tenant to refrain from smoking anywhere on the property or inside the rental unit for the duration of the tenancy. Pursuant to section 26 of the Act the Tenant is required to pay the Landlord a proportional amount of rent for the rental period of December 1 to 15, 2010.

Conclusion

A copy of the Landlord's decision will be accompanied by an Order of Possession effective **December 15, 2010, after service upon the Tenant**. This Order must be served on the Tenant and may be filed in Supreme Court and enforced as an Order of that Court.

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: November 25, 2010.

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Dispute Resolution Officer