



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Ministry of Public Safety and Solicitor General

## DECISION

Dispute Codes      CNC FF

### Introduction

This hearing dealt with an Application for Dispute Resolution by the Tenant to cancel a notice to end tenancy issued for cause.

The Landlord, the Tenant and a Tenant's witness appeared, gave affirmed testimony, were provided the opportunity to present their evidence orally, in writing, and in documentary form.

### Issue(s) to be Decided

Is the Tenant entitled to an Order cancelling a 1 Month Notice to End Tenancy issued for Cause under section 47 of the *Residential Tenancy Act* and to recover the filing fee for this Application?

### Background and Evidence

The Tenant testified that there is a written tenancy agreement, but the tenancy agreement was not provided into evidence. I heard testimony that this tenancy began on May 28, 2009, monthly rent is \$840.00 and the Tenant paid a security deposit of \$400.00 at the beginning of the tenancy.

Pursuant to the rules of procedure for the Act, the Landlord proceeded first in the hearing and testified as to why the Tenant had been served a One Month Notice to End Tenancy.

Although not submitted into evidence by either party, I heard testimony that the Landlord issued a One Month Notice to End Tenancy for Cause (the "Notice") to the Tenant on March 28, 2011, with a stated effective date of April 30, 2011. I further note that the Tenant filed his application for dispute resolution within the time in accordance with the Act.

The cause as stated on the Notice indicated that the Tenant significantly interfered with or unreasonably disturbed another occupant or the landlord, seriously jeopardized the health and safety or lawful right of another occupant or the landlord or put the landlord's property at significant risk.

The Landlord testified that the Tenant was causing a problem in the building which the rental unit is in, drinking and smoking in the common area. The Landlord further testified that the Tenant used bad language and parties with his son and younger people, interfering with other tenants. The Landlord attributed the problems to the Tenant's drinking and that when the Tenant is not drinking, he is a good tenant.

The Tenant denied causing a problem or drinking to the extent he interfered or disturbed anyone. The Tenant and his witness testified that the Tenant smokes only in his rental unit, which is allowed, and does not dispose of his cigarette butts in the common areas.

The Tenant further stated that the Landlord charged him an NSF fee in the amount of \$40.00, when his rent payments have been timely made and is seeking this amount returned.

The Tenant is also requesting the recovery of his filing fee.

### Analysis

Based on the above testimony and evidence, and on a balance of probabilities, I find as follows:

The burden is on the Landlord to prove the Tenant seriously jeopardized the health or safety or lawful right of another occupant or the landlord, and adversely affected the quiet enjoyment, security, safety or physical well-being of another occupant or the landlord.

I find that at the time of the hearing there was insufficient evidence to support these allegations. The Landlord failed to submit a copy of the Notice or any supporting evidence, which he stated is available.

Based on the aforementioned I find that the Landlord has not succeeded with the burden of proof for issuing the 1 Month Notice to End Tenancy issued on March 28, 2011, therefore the **Notice** is hereby **cancelled**.

As to the Tenant's claim for a monetary order for \$40.00, the Landlord testified that the Tenant paid \$800.40 in rent for December 2010, instead of \$840.00 and had requested the amount of \$39.60 from the Tenant. The Landlord stated that this was the amount charged and not a NSF charge.

In response, the Tenant said he thought he paid the full amount in December, but could not verify this.

I therefore dismiss the Tenant's claim for \$40.00 due to lack of proof.

**Filing fee - \$50.00.** I find that the Tenant has succeeded in large and that he should recover the filing fee from the Landlord.

#### Conclusion

**I Hereby Order** that the 1 Month Notice to End Tenancy, issued on March 28, 2011, is cancelled, and is of no force or effect.

**I Hereby Order** the Tenant to deduct \$50.00 from the monthly rent payable for May 2011, to recover the filing fee, pursuant to Section 72(a) of the *Residential Tenancy Act*.

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: April 26, 2011.

---

Residential Tenancy Branch