

## **DECISION**

Dispute Codes      MT, CNC

### **Introduction**

There are two applications filed by the Tenant. The first application is to allow the tenant more time to make an application to cancel a notice to end tenancy. The second application if allowed is to cancel the notice to end tenancy for cause.

Both parties attended the hearing by conference call and gave testimony.

The Tenant states that he is elderly and suffers frequent ill health. During the initial 10 day period, the Tenant states that he was suffering from ill health and was restricted to his rental unit and could not leave. The Tenant states that he filed the dispute application as soon as possible after on June 9, 2011. This was 3 days after the allowed 10 days. The Landlord does not dispute the Tenants reasons for applying for more time. I am satisfied that the Tenant had a compelling reason and grant the Tenant more time to file his application. The Tenant's second application to cancel a notice to end tenancy shall proceed.

### **Issue(s) to be Decided**

Is the Tenant entitled to an order to cancel the Landlord's notice to end tenancy for cause?

### **Background and Evidence**

Both parties agree that the Tenant has filed no evidence and that the Landlord has filed two evidence packages. The Landlord confirms receipt of the Tenant's notice of hearing documents.

The Tenant confirms receipt of the 1 month notice to end tenancy for cause and understands the reasons listed on the notice. The Tenant does not agree with the material term breach that the Landlord is seeking to enforce. The Tenant states that other occupants are smoking on or in the property. The Landlord states that these persons are people that have lived in their units prior to the no smoking policy being implemented in 2009 and that all new tenants enter into this agreement as part of their tenancy since then.

The Landlord has served three written notices to the Tenant to comply with the material term of the tenancy agreement. The Tenant confirms receiving these notices, but states that he has not responded to any. The Landlord has provided a copy of the signed tenancy agreement as well as a copy of the addendum that prohibits smoking on the property. The Tenant confirms in his direct testimony that he is smoking on the property.

### Analysis

As both parties have attended the hearing and have confirmed receiving the notice of hearing and submitted evidence packages, I am satisfied that both have been properly served.

I am satisfied that the Tenant has breached a material term of the tenancy agreement based upon the submitted documentation and the direct evidence provided by the Tenant. The Landlord's notice to end tenancy is valid. The Tenant's application to cancel the notice to end tenancy is dismissed.

### Conclusion

The Tenant's application to cancel the notice to end tenancy is dismissed.

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: June 21, 2011.

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Residential Tenancy Branch