



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### Dispute Codes:

CNC

### Introduction

The tenant applied to cancel a notice ending tenancy for Cause.

Both parties were present at the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained, evidence was reviewed and the parties were provided with an opportunity to ask questions about the hearing process. They were provided with the opportunity to submit documentary evidence prior to this hearing, all of which has been reviewed, to present affirmed oral testimony and to make submissions during the hearing. I have considered all of the evidence and testimony provided.

### Issue(s) to be Decided

Should the 1 Month Notice ending Tenancy for Cause issued on May 9, 2011, be cancelled?

### Background and Evidence

The landlord and the tenant agree that a 1 Month Notice to End Tenancy for Cause was served on the tenant indicating that the tenant was required to vacate the rental unit on June 30, 2011.

The reasons stated for the Notice to End Tenancy were that the tenant or a person permitted on the property by the tenant has seriously jeopardized the health or safety or lawful interest of another occupant or the landlord; and adversely affected the quiet enjoyment, security, safety or well-being of another occupant or the landlord.

The parties agreed that the tenancy commenced in January 2009, rent is due on the first day of each month. Smoking is not a prohibited term of the tenancy.

The landlord acknowledged that occupants of the property do smoke marijuana and that the landlord has no interest in denying the right of individuals to live as they choose, as long as it does not interfere with the rights of other occupants, as provided by the Act. This intention was confirmed by a Notice given to tenants in 2009; a copy of which was submitted as evidence. The tenant stated she did not receive the Notice in 2009.

The landlord stated she is allergic to marijuana smoke and that she has discussed the use of marijuana with the tenant in the past. At the beginning of May, 2011, the landlord showed a unit in the building and could smell marijuana smoke. The tenant stated that landlord did come to her door and asked that she spray air freshener in the hall and lobby, which she did.

The landlord has not given the tenant any written warning and acknowledged that other occupants of the building smoke marijuana and cigarettes; but that they go outside.

### Analysis

During the hearing I found that the Notice issued on May 9, 2011, complied with the Act. It was not dated, but, as provided by section 68 of the Act, I found that the tenant fully understood the intention of the landlord, that the Notice was served on the date it was issued and that the tenant had applied to cancel the Notice within the required time frame.

I then determined that the Notice was of no force or effect and that the tenancy would continue as provided by the Act.

The landlord provided no evidence of anyone experiencing ill health affects, of a loss of quiet enjoyment, security or safety as a result of the tenant having smoked marijuana. Further, the parties agreed that other occupants smoke marijuana and cigarettes in the building.

In the absence of any evidence that the tenant has breached the Act, I find that the problem is one of annoyance rather than cause to evict this tenant.

During the hearing I suggested that if the landlord wishes to keep the halls and balcony areas free of smoke they may wish to convert the building, over time, to a non-smoking property.

### Conclusion

As I have determined that the landlord has submitted insufficient evidence to establish that they have grounds to end this tenancy pursuant to section 47 of the Act, I hereby set aside the One Month Notice to End Tenancy, issued May 9, 2011, and I order that this tenancy continue until it is ended in accordance with the 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: June 10, 2011.

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