



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

**Dispute Codes:** CNC

### **Introduction**

This hearing dealt with an application by the tenant for an order to set aside a notice to end tenancy. Both parties attended the hearing and had opportunity to be heard.

### **Issue to be Decided**

Does the landlord have grounds to end this tenancy?

### **Background and Evidence**

The tenancy began on January 15, 2012. The rental unit consists of an apartment on the second floor of a building complex. A restaurant rents the first floor. On March 02, 2012, the landlord served the tenant with a one month notice to end tenancy for cause.

The notice to end tenancy alleges that the tenant or a person permitted on the property by the tenant has significantly interfered with or unreasonably disturbed another occupant. The notice also alleges that the tenant has engaged in illegal activity that has adversely affected the quiet enjoyment, security, safety or physical well-being of another occupant and jeopardized a lawful right of another occupant.

The landlord stated that the restaurant owner has made several complaints about the smell of marijuana coming from the second floor. Upon receipt of each complaint, the landlord gave the tenant a verbal warning. The tenant denied smoking marijuana inside the apartment and stated that there are several other tenants on the second floor, who do so. The tenant also stated that she is on house arrest and is randomly visited by the local police. If she is found smoking marijuana, she will be arrested and sent to jail and for this reason she does not smoke inside the rental unit. The landlord did not file any evidence to prove the origin of the marijuana smoke.

The landlord also described an incident on February 29 which prompted the landlord to issue the notice to end tenancy. The tenant's visitors got into a fight and one of them threw a pot full of food into the hallway. The tenant did not dispute this but stated that those visitors were no longer welcome in her apartment, this was a first incident of this nature and since that day there have been no more incidents. The landlord did not serve the tenant with any warning letters nor did she file any documentary evidence to support her reasons for wanting the tenancy to end.

## **Analysis**

In order to support the notice to end tenancy, the landlord must prove at least one of the grounds alleged, namely that the tenant has significantly interfered with or unreasonably disturbed another occupant and/or has engaged in illegal activity that has adversely affected the quiet enjoyment, safety or physical well-being of another occupant.

As explained to the parties during the hearing, the onus or burden of proof is on the party making a claim to prove the claim. When one party provides evidence of the facts in one way and the other party provides an equally probable explanation of the facts, without other evidence to support the claim, the party making the claim has not met the burden of proof, on a balance of probabilities, and the claim fails. In this case the landlord stated that the tenant smokes marijuana inside the apartment while the tenant denies doing so. The landlord did not file any additional evidence to support her testimony and therefore I find that the landlord has not proven that the tenant's unit is the only source or one of the sources of the smell of marijuana smoke.

I accept that the tenant and/or her guests created some disturbances on February 29, but I am not satisfied that the actions of the tenant justify bringing this tenancy to an end. Since the landlord did not file any evidence to support her notice to end tenancy and has not served the tenant with warning letters, it appears that this incident is isolated and not an ongoing pattern of behaviour for this tenant. I therefore allow the tenant's application and set aside the landlord's Notice to End Tenancy dated March 02, 2012. As a result, the tenancy shall continue in accordance with its original terms.

The tenant would be wise to refrain from giving other occupants of the residential complex, reason to complain. I find it timely to put the tenant on notice that, if such behaviours were to occur again in the future and another notice to end tenancy issued, the record of these events would form part of the landlord's case should it again come before a dispute resolution officer, for consideration.

## **Conclusion**

The notice to end tenancy is set aside and the tenancy will continue.

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: March 29, 2012.

---

Residential Tenancy Branch