



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### **Dispute Codes:**

CNC; FF

### **Introduction**

This hearing dealt with the Tenants' application cancel a *One Month Notice to End Tenancy for Cause* (the Notice) issued June 25, 2012, and to recover the cost of the filing fee from the Landlords.

The parties gave affirmed testimony and had an opportunity to be heard and respond to other party's submissions.

It was established that the Landlord was served with the Notice of Hearing documents by registered mail sent June 29, 2012. It was also established that the parties exchanged copies of their documentary evidence.

### **Issue to be Decided**

Should the Notice issued June 25, 2012, be cancelled?

### **Background and Evidence**

This tenancy began on or about April 1, 2012. The rental unit is a single family dwelling. There is no written tenancy agreement, however the Landlords provided a copy of the "Application For Rent of Suite" that the Tenants filled out, which includes a receipt for the security deposit paid; twenty typewritten "Conditions of Tenancy"; and 3 additional hand-written conditions.

The male Landlord testified that within two weeks of the Tenants moving into the rental unit he received calls from three neighbours expressing concern about the Tenants' loud fighting. The Landlord stated that police were called by one of the neighbours because of the noise and because the neighbour was concerned that someone would get hurt.

The male Landlord testified that the parties had an agreement that there would be no pets or smoking allowed. He stated that he was advised by his caretaker that the Tenants have a dog. The male Landlord stated that he was at the rental unit on May 19, 2012 and noticed that there were a lot of cigarette butts on both of the decks. The male Landlord stated that he is concerned about lit butts causing fires if the Tenant does not dispose of them properly.

The male Landlord testified that there were two more complaints about the Tenants fighting, in May and on June 1, 2012. He stated that he sent the Tenants a written warning on June 11, 2012 and that on June 17 and 24, the Tenants caused further disturbances to their neighbours. He issued the Notice and hand delivered it to the female Tenant at the rental unit on June 26, 2012.

The Tenant did not dispute that the police were present on July 6, 2012, after a neighbour called them. He stated that the dog belongs to his wife's sister and that the dog comes to visit when she does. He stated that the agreement was that there would be no smoking in the house and that he does not smoke in the house. He stated that he always uses ashtrays and disposes of the ashes and cigarette butts appropriately.

The Tenant stated that the male Landlord and three other persons came to the rental property and were in the Tenant's yard without notice and without the Tenants' permission.

### **Analysis**

In a situation where a tenant seeks to cancel a notice to end the tenancy, the onus is on the landlord to provide sufficient evidence that the tenancy should end for the reasons indicated on the notice.

In this case, the Notice discloses the following reasons to end the tenancy:

1. Tenant has engaged in **illegal activity** that has, or is likely to adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant or the landlord.
2. Breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.

(emphasis added)

The Landlords provided insufficient evidence that the Tenants have engaged in illegal activity. There was no evidence that either of the Tenants was arrested as a result of the police attending the rental unit. In addition, the Landlords' evidence was that the

noise complaints were coming from the Tenants' neighbours, who are not "occupants" of the rental property. Therefore, I find that the Landlords have not provided sufficient evidence that the tenancy should end for this reason.

With respect to the second reason indicated on the Notice, a "material term" of a tenancy agreement is a term that both parties agree is so important that the most trivial breach of that term gives the other party right to end the agreement.

The "Conditions of Tenancy" does not include a condition prohibiting smoking, either inside and/or outside the rental unit. However, the male Tenant submitted that the parties agreed that there would be no smoking inside the rental unit. He stated that there was no agreement that he could not smoke outside the rental unit. I find that the Landlords did not provide sufficient evidence to end the tenancy because the male Tenant is smoking **outside** the rental unit. Based on the testimony of both parties, **I find that there is a material term in the tenancy agreement that there be no smoking inside the rental unit.** The Landlords did not provide sufficient evidence that the Tenant smoked inside the rental unit.

Included in the "Conditions of Tenancy" is a clause prohibiting pets, which states, **"No animals or pets of any description may be kept in the premises and birds may not be fed from the premises."** The Landlords did not provide sufficient evidence that the dog was in the premises after the Tenants received the warning letter. The Tenant submitted that the clause did not include animals that only were visiting, and did not include animals that were in the yard but not inside the house. The male Landlord submitted that the clause meant any and all animals, whether belonging to the tenant or not. The parties asked me to make a binding decision with respect to what the "no pets" clause means.

The following is a brief definition of the words "keep" and "premises" taken from an on-line dictionary, [www.dictionary.com](http://www.dictionary.com)

Keep: to hold in a given place

Premises: a tract of land including its buildings. a building together with its grounds or other appurtenances.

I find that the "no pets" clause as written means that no animals or pets (whether belonging to the Tenant or to the Tenants' guests) are to be on the rental property (inside the rental unit or in the yard). I also find that this is a material term of the tenancy agreement, effective **immediately**.

I find that the Landlords have not provided sufficient evidence that the tenancy should end for the reasons indicated on the Notice and therefore the Tenant's application to cancel the Notice is granted.

The Tenants have been successful in their application and I find that they are entitled to recover the cost of the filing fee from the Landlords. Pursuant to the provisions of Section 72 of the Act, the Tenants may deduct **\$50.00** from future rent due to the Landlords.

The Landlords are cautioned to comply with Section 29 of the Act when exercising their right to access the rental property. A copy of Section 29 accompanies this Decision.

Both parties are advised to make themselves acquainted with their rights and obligations under the Residential Tenancy Act and to treat each other with respect.

### **Conclusion**

The Notice to End Tenancy issued June 25, 2012, is cancelled. The tenancy remains in full force and effect until it is ended in accordance with the provisions of the Act.

Pursuant to the provisions of Section 72 of the Act, the Tenants may deduct **\$50.00** from future rent due to the Landlords, in recovery of the cost of the filing fee.

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: July 27, 2012.

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Residential Tenancy Branch