



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      CNC

### Introduction

This hearing was convened in response to an application by the Tenant pursuant to Section 47 of the *Residential Tenancy Act* (the “Act”) for an Order cancelling a Notice to End Tenancy for Cause. The Tenant and Landlord were each given full opportunity to be heard, to present evidence and to make submissions.

### Issue(s) to be Decided

Is the notice to end tenancy valid?

Is the Tenant entitled to a cancellation of the notice to end tenancy?

### Background and Evidence

The tenancy started on March 2007. Monthly rent is \$480.00. On January 30, 2013, the Landlord personally served the Tenant with a One Month Notice to End Tenancy for Cause (the “Notice”).

The Notice lists the following reasons:

1. The tenant or a person permitted on the property by the tenant has:
  - a. Significantly interfered with or unreasonably disturbed another occupant or the landlord;
2. The tenant has engaged in illegal activity that has or is likely to:
  - a. Adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant or the landlord;
  - b. Jeopardize a lawful right or interest of another occupant or the landlord.

The Landlord states that the Notice has been issued for two reasons: noise and smoking of marihuana. The Landlord states that prior to January 30, 2013, the Landlord did not receive any noise complaints about the Tenant. The Landlord states that all that was heard was gossip and the Landlord has no facts or dates to support this reason. The Landlord states that a tenant who lives above the Tenant wrote a letter of complaint dated February 11, 2013 stating that the Tenant smokes "weed" and that the family can smell it in the halls. The Landlord states that the only other complaints come from last May and June 2012 and that the presence of the police did not occur prior to January 30, 2013.

The Tenant states that she does not smoke marihuana and that she herself can smell the smoking of marihuana all around. The Tenant states that she does not know who smokes the marihuana.

### Analysis

Where a Notice to End Tenancy comes under dispute, the landlord has the burden to prove, on a balance of probabilities, that the tenancy should end for the reason or reasons indicated on the Notice and that at least one reason must constitute sufficient cause for the Notice to be valid. Given that there is no evidence to support any complaints of noise in relation to the Tenant made prior to the issuance of the Notice, I find that The Landlord has not substantiated that the Tenant has interfered with or disturbed anybody. Considering that the tenant's complaint in relation to marihuana was made after the issuance of the Notice, does not include evidence of witnessing the smoking of marihuana by the Tenant and taking into account the Tenant's evidence of also smelling the smoke and the Tenant's denial of smoking marihuana, I find the Landlord has failed to substantiate that the Tenant engaged in an illegal activity.

As the Landlord has not substantiated any of the reasons on the Notice, I find that the Notice is not valid. The Tenant is therefore entitled to a cancellation of the Notice and the tenancy continues.

Conclusion

The Notice is cancelled and the tenancy continues.

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: February 28, 2013

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Residential Tenancy Branch

