



# 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 an application by the tenant to cancel a One Month Notice to End Tenancy For Cause (the Notice), dated July 31, 2013, with an effective date of August 31, 2013.

Both parties attended the hearing and were given opportunity to present all relevant evidence and relevant testimony in respect to this claim and to make relevant prior submission of document evidence to the hearing and fully participate in the conference call hearing. Prior to concluding the hearing both parties acknowledged they had presented all of the relevant evidence that they wished to present. Only the tenant provided document evidence.

At the outset the landlord requested an Order of Possession. It must be noted that in this type of application, the burden of proof rests with the landlord to provide evidence that the Notice was validly issued for sufficient reasons as stated in the Notice to End.

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

Is the notice to end tenancy valid and issued for valid reasons?  
Should the Notice to End dated August 13, 2012 be set aside?  
Is the landlord entitled to an Order of Possession?

### **Background and Evidence**

A copy of the Notice to End was submitted. The notice to end was issued for the following reasons;

*-Tenant or a person permitted on the property by the tenant has:  
Significantly interfered with or unreasonably disturbed another occupant or the landlord.  
Seriously jeopardized the health or safety or lawful right of another occupant or the landlord*

The tenant disputes the Notice to End. Both parties acknowledge that the tenancy

relationship is acrimonious and stressed.

The landlord testified that the tenant smokes inside the rental unit and is causing strife between them and the tenancy upstairs. The landlord testified they have been receiving complaints from the tenancy upstairs. The tenant testified that the tenants upstairs simply don't like them; and, that they in fact smoke, but do so outside the rental unit. Neither party presented evidence in relation to smoking and the contractual written tenancy agreement between the parties. The landlord did not present additional evidence for this matter.

### **Analysis**

In this type of application, the burden of proof rests with the landlord to provide evidence that the Notice was validly issued for stated and sufficient reasons.

I find the landlord has not presented sufficient evidence for the reasons they stated in the Notice to End. As a result, I find the landlord has not met their burden in this matter. I find that the landlord has not provided *sufficient* compelling evidence that the Notice to End was issued for the reasons stated in the Notice to End, and as a result I am unable to establish that the landlord issued the tenant a valid Notice to End. Therefore, **I Order** the Notice to End dated July 30, 2013 **is cancelled**, or set aside. If necessary, the landlord is at liberty to issue another new *valid* Notice to End for *valid* reasons if they have evidence to do so. The tenant is entitled to recover their filing fee of \$50.00.

### **Conclusion**

The tenant's application is granted. The landlord's Notice to End is **set aside and is of no effect**. The tenancy continues.

**I Order** that the tenant may deduct **\$50.00** from a future rent.

**The Decision is final and binding on both parties.**

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: September 09, 2013



# Residential Tenancy Branch

RTB-136

**All decisions are binding and both landlord and tenant are required to comply.**

The RTB website ([www.rto.gov.bc.ca](http://www.rto.gov.bc.ca)) has information about:

- How and when to enforce an order of possession:  
Fact Sheet RTB-103: *Landlord: Enforcing an Order of Possession*
- How and when to enforce a monetary order:  
Fact Sheet RTB-108: *Enforcing a Monetary Order*
- How and when to have a decision or order corrected:  
Fact Sheet RTB-111: *Correction of a Decision or Order*
- How and when to have a decision or order clarified:  
Fact Sheet RTB-141: *Clarification of a Decision or Order*
- How and when to apply for the review of a decision:  
Fact Sheet RTB-100: *Review Consideration of a Decision or Order* **(Please Note: Legislated deadlines apply)**

To personally speak with Residential Tenancy Branch (RTB) staff or listen to our 24 Hour Recorded Information Line, please call:

- Toll-free: 1-800-665-8779
- Lower Mainland: 604-660-1020
- Victoria: 250-387-1602

Contact any Service BC Centre or visit the RTB office nearest you. For current information on locations and office hours, visit the RTB web site at [www.rto.gov.bc.ca](http://www.rto.gov.bc.ca)