



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNC, FF

### Introduction

This hearing was convened in response to an application by the Tenant pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

1. An Order Cancelling a Notice to End Tenancy for Cause - Section 47; and
2. An Order to recover the filing fee for this application - Section 72.

The Tenant and Landlord were each given full opportunity to be heard, to present evidence and to make submissions under oath.

### 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?

Is the Tenant entitled to recovery of the filing fee?

### Background and Evidence

The following are agreed facts: The tenancy started 35 years ago. Rent of \$450.00 is currently payable. On January 27, 2014 the Tenant received a notice to end tenancy for cause (the “Notice”) for the following reasons:

1. The tenant or a person permitted on the property by the tenant has:
  - Significantly interfered with or unreasonably disturbed another occupant or the landlord;
  - Put the landlord's property at significant risk.
2. The Tenant has engaged in illegal activity that has or is likely to damage the landlord's property.

The Landlord states that there is no evidence of illegal activity and that this reason was checked in error.

The Landlord states that the Tenant has stuffed items from the floor to ceiling in a middle TV room and that these items are covered with dust creating both a health and fire hazard. The Landlord states that a couple of days before giving the Tenant the Notice, the Landlord asked the Tenant to remove the articles and offered to assist. The Landlord states that the Tenant responded that no help was needed. The Landlord also referred to incidents occurring one or more years ago and to a hallway light that had not been replaced. This light is not in the Tenant's unit. The Landlord states that the fire department was not called in to inspect the unit for a fire hazard. The Landlord states that it is a health hazard because the items are dusty and dirty with no ventilation.

The Tenant states that the items stacked are made of chairs, boxes containing cds and 2 DVD players. The Tenant states that the items are not up to the roof but are stacked about 3 feet high. The Tenant states that the Landlord has been in the unit several times while the items were present over the past 5 years and has never said anything about them. The Tenant denies a health hazard to himself or anyone else. The Tenant states that the fire department has made yearly inspections of the building including his unit and there have never been any issues.

### 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 the lack of supporting evidence such as photos or inspection reports from relevant authorities indicating health or fire hazards created by the Tenant's belongings in the unit and considering the Tenant's evidence, I find on a balance of probabilities that the Landlord has not met the burden of proof and that the

Notice is not valid for the reasons given. I find therefore that the Tenant is entitled to a cancellation of the Notice. The tenancy continues.

As the Tenant has been successful, I find that the Tenant is entitled to recovery of the **\$50.00** filing fee and I order the Tenant to reduce April 2014 rent payable by this amount.

Conclusion

The Notice is cancelled. I order the Tenant to reduce April 2014 rent by \$50.00 in full satisfaction of the claim.

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 20, 2014

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Residential Tenancy Branch

