



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding Silver Birch Lodge  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      CNC

### Introduction

This hearing was convened by way of conference call concerning an application made by the tenant to cancel a notice to end tenancy for cause.

The tenant and an agent for the landlord attended the conference call hearing and each gave affirmed testimony and provided evidentiary material in advance of the hearing to the Residential Tenancy Branch and to each other. The landlord also called 4 witnesses who gave affirmed testimony. The parties were given the opportunity to cross examine each other and the witnesses on the evidence and testimony provided, all of which has been reviewed and is considered in this Decision.

No issues with respect to service or delivery of documents or evidence were raised.

### Issue(s) to be Decided

Has the tenant established that the notice to end tenancy should be cancelled?

### Background and Evidence

The parties agree that this month-to-month tenancy began sometime in 2007 and the tenant still resides in the rental unit. Rent is subsidized and the tenant's portion is \$485.00 per month payable on the 1<sup>st</sup> day of each month, and there are no rental arrears.

The landlord's agent is the current president of the landlord society and testified that the tenant had an accident wherein the tenant lit a cigarette while his oxygen tubes were in his nose. The oxygen came in contact with the open flame and it blew up in his face. The tenant had told different people around the rental complex each a different story, and no one was there to witness the event, but the tenant suffered burns to his nose and lips and told the landlord's agent that he sought medical attention.

The landlord's agent testified that on February 11, 2014 he prepared a 1 Month Notice to End Tenancy for Cause with an effective date of vacancy of March 31, 2014. After providing the completed form to the Board of Directors, it was voted that the notice be served on the tenant, and the landlord's agent placed it in the tenant's mail slot on February 20, 2014. A copy of the notice has been provided for this hearing. It shows that the reasons for ending the tenancy are:

- Tenant or a person permitted on the property by the tenant has:
  - seriously jeopardized the health or safety or lawful right of another occupant or the landlord
  - put the landlord's property at significant risk
- Tenant has engaged in illegal activity that has, or is likely to:
  - damage the landlord's property
  - adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant or the landlord.

The notice was issued because of what other tenants told the landlord's agent and because of written incident reports provided from other tenants. Those reports went to the Board of Directors, and considering other warning letters on file, the Board decided to issue the notice to end tenancy. The tenant had told the landlord's agent that the tenant lit a lighter to light a cigarette with oxygen on, and that conversation took place after the landlord's agent served the notice to end tenancy.

The landlord has provided letters as evidence, being one dated May 5, 2009 addressed to the tenant from the landlord society stating that the tenant has been smoking marijuana in the rental unit and was seen purchasing a package from a known trafficker. It states that the tenant is to consider this the first notice and any further incidents will lead to eviction. The letter goes on to state that an unlicensed vehicle on the property needs to have insurance and has an oil leak and requests that it be removed.

The second letter is dated October 4, 2013 from the landlord society to the tenant stating that the Board of Directors had learned there was often an odor of marijuana smoke emanating from the rental unit to the hallway, use of the substance is inappropriate, unacceptable when used inside the building and reminds the tenant of the Addendum to the tenancy agreement which states that a violation shall be good cause for ending the tenancy.

The third letter provided by the landlord is dated February 20, 2014 from the president of the landlord society to the tenant speaking of marijuana usage by the tenant, and failing to report a fire in the rental unit. The letter states that the Board has decided to proceed with a notice to end the tenancy.

The landlord's agent also testified that with respect to the illegal activity, the rental complex moved to a non-smoking environment in 2010 for new tenants, but present smokers were asked to refrain from smoking inside the rental units. The tenant has been smoking inside his rental unit. Also, the odor of marijuana has been detected by residents and staff, and the landlord's agent is confident that it's coming from the tenant's rental unit.

#### Witness RC

The landlord's first witness testified that he was the former president of the landlord society and referred to an incident resulting in a letter dated May 5, 2009. The tenant had been seen by the manager receiving a package in the parking lot or somewhere and afterwards the odor of pot was detected in the hallway. Another neighbour also reported the smell. A warning was issued to the tenant, who called the witness and the parties met. The tenant was accusatory and upset but the police were not called. The witness has not been an employee for a few years now, but is not aware of any further issues and guesses that the tenant "went into hibernation." The witness left that employment about a year and a half later. The warning letter remained on the tenant's file.

#### Witness BD

The second witness of the landlord testified that on January 30, 2014 the witness wrote an incident report. The witness explained that she ran into the tenant in the hall on January 29, 2014 at which time the tenant told her a lighter blew up in his face. The witness testified that she has seen the tenant smoke with oxygen in his nose last summer and fall. The witness stopped visiting the tenant for that reason. The incident report states that the witness observed the tenant in his rental unit light up with the oxygen on. The witness told the tenant that it could explode, but the tenant told the witness not to worry about it as it wouldn't do anything. The witness was not encouraged by anyone to write the incident report. The complaint was made after the witness saw the tenant's face burned, and stated that the tenant is not being considerate to those living around him; he just shrugs it off.

#### Witness KS

The third witness of the landlord testified that she made a written complaint to the landlord about the tenant, a copy of which has been provided for this hearing. The report is undated and the witness testified it was written on February 4, 2014. The witness can smell cigarette smoke through the registers when she's in bed, and in the hallway.

Witness BK

The landlord's fourth witness testified that she is the manager of the complex and made an incident report to the landlord on January 29, 2014. The witness and 4 or 5 other tenants were having coffee in the lounge and the tenant came in with a burned face and told the group that a lighter blew up in his face. The witness did not believe him because of the nature of the burn; the plastic that goes into his nose burned his upper lip to his nose. The tenant later agreed that it was from smoking and the oxygen, but the witness has never personally observed the tenant do so in the last 6 years of being employed by the landlord.

The tenant testified that the manager of the complex has a vendetta against the tenant for reasons outside of this rental and has gone to great lengths to have others complain about the tenant. The manager's coffee group consists of all of the landlord's witnesses who testified and provided incident reports. They wanted to know what happened to the tenant's face and he told them a lighter blew up and made jokes to others who asked. What really happened is that the tenant was in his car near a bridge in town when he lit a cigarette and had forgotten to remove the oxygen hose in his nose and he suffered a burn on his face. The tenant was not in the rental unit or on the rental property when the incident took place and it has never happened before or since and there was no explosion.

The tenant further testified that he called the Fire Marshall to inspect the rental unit, and he found no evidence of there ever being a fire in the rental unit. The Fire Marshall checked the tenant's oxygen supply, agreed it was stored properly, and promised a written report would be passed on to the tenant and the landlord's agent, but the tenant has not yet received a copy.

The tenant also testified that the letter on the landlord's file from 2009 stemmed from an incident wherein the tenant was wrongfully accused of purchasing a package from a known drug dealer. The tenant had purchased tires from a fellow who unknowingly to the tenant turned out to be the brother-in-law of the manager of the complex. The police were called who later told the tenant that the manager is afraid of the man and asked that the tenant not invite him to the property. It's not the tenant's fault. Also, the President at that time told the tenant that he'd remove the letter from the tenant's file.

The tenant also disputes the testimony of witnesses stating that they will do what the manager asks them to do, including write incident reports. There was no explosion.

The landlord's agent submitted that based on the history of the tenant's actions which show a lack of concern to open flame and oxygen, the landlord has a duty to the safety of all residents in the 23 units.

### Analysis

Where a notice to end tenancy for cause is disputed by a tenant, the onus is on the landlord to prove the validity and reasoning for issuing it.

In this case, I have reviewed the notice to end tenancy and I find that it is in the proper form, was issued on February 11, 2014, contains an effective date of vacancy that is in compliance with the *Residential Tenancy Act*, and I find that it was served on the tenant on February 20, 2014 by placing it in the tenant's mail slot. The *Act* states that documents served in that manner are deemed to have been served 3 days later, or in this case, February 23, 2014. The *Act* requires a tenant to dispute a 1 Month Notice to End Tenancy for Cause within 10 days of service or the tenant is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice. In this case, the tenant filed the application for dispute resolution on February 28, 2014, which I find is within the time provided in the *Act*.

With respect to the reasons for issuing the notice, firstly, I cannot find that the tenant has engaged in any legal activity at all. Witnesses state that the odor of marijuana was present and they believed it to be coming from the rental unit, but no one has seen the tenant smoke or possess marijuana. Further, I have heard no testimony of engaging in any illegal activity that may damage the landlord's property, nor is there any evidence that illegal activity has adversely affected the quiet enjoyment, security, safety or physical well-being of another occupant or the landlord.

With respect to seriously jeopardizing the health or safety or lawful right of another occupant or the landlord and putting the landlord's property at significant risk, the witnesses testified that the tenant has been smoking with his oxygen tank on. It is clear to me that there was no explosion on the rental property or in the rental unit. No one saw the tenant's face get burned, and the tenant testified that it happened in his car while not on the rental property, and has never happened before or since. There is no evidence to the contrary. One of the witnesses testified that she had seen the tenant smoke in his rental unit with the oxygen on, but no one was able to provide any evidence of whether or not such actions would blow up on every occasion, or why it

didn't on the occasion when the witness observed it. Perhaps the oxygen was turned off.

In the circumstances, I am not satisfied that the tenant has seriously jeopardized the health or safety or lawful right of anyone, or put the landlord's property at significant risk. Therefore, I find that the notice to end tenancy should be cancelled.

Since the tenant has been successful with the application, the tenant is also entitled to recovery of the \$50.00 filing fee for the cost off the application. I order the tenant to reduce the amount of rent payable by that amount for the month of April, 2014 as recovery.

### Conclusion

For the reasons set out above, the notice to end tenancy issued February 11, 2014 is hereby cancelled and the tenancy continues.

I order the tenant to reduce the amount of rent payable for the month of April, 2014 by \$50.00 as recovery 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: March 18, 2014

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Residential Tenancy Branch

