



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding Nalabila Creek Property Management  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      CNC

### Introduction

This matter dealt with an application by the tenant to cancel a Notice to End Tenancy for cause.

Service of the hearing documents, by the tenant to the landlord, was done in accordance with section 89 of the *Act*; served by registered mail on February 13, 2014. Canada Post tracking numbers were provided by the tenants advocate in testimony. The landlord was deemed to be served the hearing documents on the fifth day after they were mailed as per section 90(a) of the *Act*.

The tenant and the tenants advocate appeared, the tenant gave sworn testimony, was provided the opportunity to present evidence orally, in writing, and in documentary form. There was no appearance for the landlord, despite being served notice of this hearing in accordance with the *Residential Tenancy Act*. All of the testimony and documentary evidence was carefully considered.

### Issue(s) to be Decided

- Is the tenant entitled to have the Notice to End Tenancy for cause cancelled?

### Background and Evidence

The tenant testifies that this month to month tenancy started on December 20, 2012. The rent for this unit is \$950.00 per month which is due on the first day of each month.

The tenants' testifies that she was served a One Month Notice to End Tenancy by the landlord and the tenant received this in person on February 11, 2014. This Notice has an effective date of March 31, 2014 and gave the following reasons to end the tenancy:

the tenant or a person permitted on the residential property by the tenant has

- (i) Significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property,

The tenant disputes the landlords claim that she or a person permitted on the property has disturbed anyone. The tenant testifies that late one night the tenant's brother was cooking something, the smoke alarm went off. This resulted in the manager who lives in the unit above the tenants accusing the tenant of smoking in her unit. The tenant testifies that this is not true and no one smokes in the unit or even on the balcony. The tenant testifies that no written warnings or breach letters have been given to the tenant prior to the Notice and no explanation of why the landlord served this Notice. The tenant seeks to have the One Month Notice cancelled.

### Analysis

The landlord did not appear at the hearing to dispute the tenant's claims, despite having been given a Notice of the hearing; therefore, in the absence of the landlord I have carefully considered the tenant's documentary evidence and testimony before me.

In this matter, the landlord has the burden of proof and must show (on a balance of probabilities) that grounds exist (as set out on the Notice to End Tenancy) to end the tenancy. This means that if the landlord does not provide any evidence to satisfy the

burden of proof and the tenant disputes the Notice then I have no evidence to support the reason given on the Notice.

Therefore, I find that the landlord has not provided sufficient evidence to show that grounds exist to end the tenancy and as a result, the Notice is cancelled and the tenancy will continue.

### Conclusion

The tenant's application is allowed. The one Month Notice to End Tenancy for Cause dated, February 06, 2014 is cancelled and the tenancy will continue.

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

