



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding Prudential Kelowna Properties  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      CNC OLC

### Introduction

This hearing dealt with the tenant's application to cancel a notice to end tenancy for cause. The application indicated that the tenant also applied for an order that the landlord comply with the Act, regulation or tenancy agreement; however, the tenant did not raise this issue in the hearing, and I therefore dismiss this portion of the tenant's application with leave to reapply.

Both the tenant and an agent for the landlord participated in the teleconference hearing. The landlord confirmed that they had received the tenant's application and evidence. The tenant stated that he did not receive the landlord's documentary evidence. The landlord stated that she sent the evidence to the tenant by registered mail; however, she was unable to provide a tracking number for the package. I therefore did not admit the landlord's documentary evidence. Both parties were given full opportunity to give testimony. I have reviewed all testimony and other admissible evidence. However, in this decision I only describe the evidence relevant to the issues and findings in this matter.

### Issue(s) to be Decided

Is the notice to end tenancy for cause dated March 14, 2014 valid?

### Background and Evidence

On March 26, 2014 the tenant received from the landlord a one-month notice to end tenancy for cause. The notice indicated that the reasons for ending the tenancy were as follows: (1) the tenant unreasonably disturbed or significantly interfered with another occupant; and (2) the tenant breached a material term of the tenancy agreement and did not correct the breach within a reasonable time after written notice to do so.

The landlord stated that they had received complaints from neighbours that the tenant was starting his motorcycle late at night. The landlord clarified that the neighbours live in a separate townhouse beside the rental unit, and they are also tenants of the landlord under a separate tenancy agreement.

The landlord also stated that the tenant has been smoking in the garage. The landlord did an inspection of the rental unit on June 12, 2013 and noticed that the garage smelled like cigarette smoke, so they sent the tenant a warning letter. The landlord stated that the tenancy agreement contains a clause forbidding smoking in the rental unit.

The landlord stated that the owner has been trying to sell the rental unit, and the landlord received complaints that the tenant was interfering with the real estate agent's showings to prospective buyers. The landlord stated that they served the tenant with the notice to end tenancy when the owner decided to take the unit off the market.

The tenant's response to the landlord's testimony was that the notice to end tenancy is frivolous and untruthful. The tenant stated that the problem is not with him but with the neighbouring tenants.

### Analysis

I find that the notice to end tenancy is not valid.

The landlord did not provide sufficient evidence to show that the tenant unreasonably disturbed the neighbours, or that the neighbours were in fact occupants of the residential property, which is required under the Act for this cause to be valid.

The landlord did not provide sufficient evidence to support the claims regarding smoking in the rental unit or garage, or whether the tenant had interfered with the landlord's agent when they were showing the unit to prospective buyers.

The notice to end tenancy is therefore cancelled.

Conclusion

I cancel the notice to end tenancy for cause dated March 14, 2014, and the tenancy continues until such time as it ends in accordance with the Act.

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: May 22, 2014

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Residential Tenancy Branch

