



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      CNC

### Introduction

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

The landlord and tenant attended the hearing and each gave affirmed testimony. The tenant was also represented by an Advocate, and the landlord called one witness who gave affirmed testimony. The parties were given the opportunity to cross examine each other 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 landlord established that the notice to end the tenancy was given in accordance with the *Residential Tenancy Act*?

### Background and Evidence

The landlord testified that this fixed-term tenancy began on May 20, 2014 and expires on May 30, 2015, after which it reverts to a month-to-month tenancy. Rent in the amount of \$770.00 per month is payable in advance on the 1<sup>st</sup> day of each month, and the tenant paid a pro-rated amount for the first month. There are no rental arrears. At the outset of the tenancy the landlord collected a security deposit from the tenant in the amount of \$380.00 which is still held in trust by the landlord, and no pet damage deposit was collected. The rental unit is one of 30 units in the complex all of which are owned by the landlord. A copy of the tenancy agreement has been provided.

The landlord further testified that the manager/caretaker of the rental complex served the tenant with a 1 Month Notice to End Tenancy for Cause on or about January 7,

2015 by personally handing it to the tenant. A copy of the notice has been provided and it is dated January 6, 2015 and contains an effective date of vacancy of February 7, 2015. The reasons for issuing the notice are:

- Tenant has allowed an unreasonable number of occupants in the unit/site;
- 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 of another occupant or the landlord.

The landlord further testified that the tenancy agreement specifies no smoking by the tenant or the tenant's guests in the building or on the property. Two tenants have complained of smoke and have stated that they may have to move out if the smoking doesn't stop. Many of the tenants are elderly and have been long-term tenants. The landlord fears that he will lose at least 2 long-term tenants if the tenant doesn't move out. One of the tenants that complained is allergic to cigarette smoke. The landlord has owned the building for over 40 years and tenants expect a standard which has been compromised by the tenant, and has personally witnessed and smelled smoke coming from the tenant's suite with the door open.

The landlord further testified that numerous persons are coming and going from the rental unit, and the tenant claimed to be a care-giver for one using the rental unit to do so, thus having a business. The landlord does not think that is reasonable and the tenant should have to go somewhere else to conduct business.

The landlord listed the following incidents:

- The first week of July the tenant reported that someone got into her suite, but there are 2 locks on the door;
- Police attended finding tenant drunk on the front steps and had no keys;
- July 10 paramedics called the landlord saying if the landlord wasn't there in 10 minutes they'd break down the door. The tenant had called 911 due to an apparent diabetic event;
- July 22 at 11:40 p.m. the tenant knocked on the manager's door stating that someone had been in her suite and asked the manager to call the police; the tenant was drunk;
- July 26 4:00 p.m. the tenant knocked on the manager's door saying she had forgotten her key;
- July 29 the tenant called 911 and paramedics had to be let in again;
- August 3 the tenant put a slipper in the door to the stairway of the complex to the outside to prevent the door from closing and locking, and August 14 a tenant

reported finding the door above open with a newspaper holding it open. Both incidents put the landlord's building at risk. The tenant admitted to the slipper;

- August 15 the landlord found water in the carport coming from the ceiling and the tenant's unit is above. The landlord went to the unit but the tenant didn't answer, so the landlord checked the other suites above the tenant's suite but found no leaks. The landlord then entered the tenant's suite and water was running in the sink with the plug in. The tenant was in the living room and came out asking what was going on. The flooring was all new and warped. The tenant said the tap leaked, but there was ¼ inch of water on the carpet that was only a month old;
- August 21 police attended wanting to be let in to see the tenant.

The landlord stated that other tenants are disturbed and offended by the tenant's behaviour and has provided letters in support of that allegation. One is from a tenant who reported that the tenant's guests knocked on his window asking to be let in. Another senior lady moved in and the landlord had assured her that it was a safe place, but she got a phone call from someone wanting to get in to see the tenant.

On August 9 the landlord spoke to the tenant about many of the issues and the tenant was asked to respect other tenants and warned about disturbances and smoking. The tenant told the landlord that her daughter had her keys and she had been away for a month and wanted another chance to prove herself, but there was no improvement. The landlord did not put the concerns in writing.

The landlord's witness testified that he is the manager when the landlord is not around, and the witness lives in the rental property. He stated that he personally served the tenant with the 1 Month Notice to End Tenancy for Cause on January 6, 2015. The witness prepared the notice and signed it on behalf of the landlord.

The witness also testified that every day he sees several of the same people coming and going to the rental unit and some stay overnight. The tenancy agreement specifies that guests are only allowed to stay for 2 weeks, and some of her guests arrive at 3:00 a.m. The witness has seen them standing outside throwing stuff at the tenant's balcony window, and other tenants have also reported that. The witness has seen the tenant and guests drunk and smoking when they walked into the rental building. The witness checks the building every night and can always hear the guests in the rental unit. For about a month one of the guests stayed and the tenant claimed that she was looking after him as a caregiver.

The witness also testified that a lady in the unit next to the tenant has told the witness several times that the tenant has harassed her, knocking on her door and trying to borrow things.

The witness also testified that some of the tenants are allergic to cigarette smoke and every tenant on the 2<sup>nd</sup> floor where the tenant lives, have complained of the tenant smoking.

The witness also stated that he and the landlord walked into the rental unit after discovering water dripping in the carport finding at least an inch of water under the tiles, and the tenant was so drunk she could hardly walk and denied that she caused it. The witness is concerned that something similar might happen with the stove and the tenants wouldn't have a home to live in.

The tenant testified that she does smoke, but not every day; only when she is stressed and never in the apartment. The tenant goes to a smoking pit often to meditate. Two of the tenant's friends visit but they don't smoke. The tenant denies that they have stayed beyond 2 consecutive weeks.

The tenant also testified that she is a good tenant and doesn't bother anyone. When the flooding had occurred, the landlord didn't call a plumber, and the tap leaked.

The tenant has never been given any warning in writing about rules being broken.

The tenant's advocate submits that there has been no written warning outlining what section of the tenancy agreement or the *Act* that the tenant has breached, nor has the landlord given any time to correct the breach. Referring to Section 47 of the *Residential Tenancy Act*, the tenant's advocate submits that the landlord has not met the burden of proof.

The landlord submits that 80% or 90% of the issue is the smoking, and the tenant admitted that she smokes. It has also been pointed out in 2 letters of other tenants saying that they will move out. There is no exception to the rule, and the tenancy agreement is very clear that no smoking is permitted on the rental property.

### Analysis

Where a tenant disputes a notice to end the tenancy given by a landlord, the onus is on the landlord to establish that it was given in accordance with the *Residential Tenancy Act*. I have reviewed the notice and I find that it is in the approved form and contains information required by the *Act* with the exception of the expected date of vacancy. The

*Act* states that the notice must be given before the date rent is payable under the tenancy agreement, and must be effective no less than 30 days after and must end the tenancy on the last day prior to the date rent is payable. The *Act* also states that where incorrect effective dates are contained in such a notice, the date is changed to the nearest date that complies with the *Act*, which I find is February 28, 2015.

With respect to the reasons for issuing the notice, the tenant's advocate submits that the landlord has not given written warning of a breach and that the burden of proof has not been met. However, the landlord has not specified a breach of a material term of the tenancy agreement that was not corrected after a reasonable time after written notice to do so in the notice, but has specified that the tenant or persons permitted on the property by the tenant have significantly interfered with or unreasonably disturbed another occupant, and has seriously jeopardized the health or safety of another occupant. With respect to meeting the burden of proof, the landlord's witness testified that all tenants on the 2<sup>nd</sup> floor have complained about the smoke coming from the tenant's rental unit and that he personally saw the tenant and a friend walk into the building while smoking. I have also considered the letters provided and I am satisfied that no smoking is a material term of the tenancy agreement, and also that other tenants have been disturbed by the tenant's guests and the tenant knocking on doors, and by being drunk.

In the circumstances, I find that the landlord had cause to issue the notice and the tenant's application is hereby dismissed.

The landlord did not request an Order of Possession.

### Conclusion

For the reasons set out above, the tenant's application is hereby dismissed in its entirety without leave to reapply.

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: February 06, 2015

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Residential Tenancy Branch

