



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNC, DRI, MNDC, OLC, RP, PSF

### Introduction

This hearing dealt with the tenant's Application for Dispute Resolution seeking to cancel a notice to end tenancy; to dispute an additional rent increase; for an order to have the landlord complete repairs; provide services or facilities required by law; and a monetary order.

The hearing was conducted via teleconference and was attended by the tenant; the landlord and her agent.

Residential Tenancy Branch Rule of Procedure 2.3 states that claims made in an Application for Dispute Resolution must be related to each other. Arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply.

It is my determination that the priority claim regarding the 1 Month Notice to End Tenancy for Cause and the continuation of this tenancy is not sufficiently related to the tenant's claim disputing an additional rent increase; seeking compensation; the provision of services or facilities required by law; or to have the landlord complete repairs. The parties were given a priority hearing date in order to address the question of the validity of the Notice to End Tenancy.

The tenant's other claims are unrelated in that the basis for them rests largely on other facts not germane to the question of whether the tenant is entitled to cancel the 1 Month Notice. I exercise my discretion to dismiss the tenant's claim disputing an additional rent increase; seeking compensation; the provision of services or facilities required by law; or to have the landlord complete repairs. I grant the tenant leave to re-apply for his remaining claims.

During the hearing the landlord did not request an order of possession should the tenant be unsuccessful in his Application for Dispute Resolution.

Issue(s) to be Decided

The issues to be decided are whether the tenant is entitled to cancel a 1 Month Notice to End Tenancy for Cause, pursuant to Section 47 of the *Residential Tenancy Act (Act)*.

### Background and Evidence

Both parties submitted into evidence the following documents:

- A copy of a tenancy agreement signed by the parties on September 19, 2013 for a month to month tenancy beginning on October 1, 2013 for the monthly rent of \$440.00 due on the 1<sup>st</sup> of each month with a security deposit of \$220.00 paid; and
- A copy of a 1 Month Notice to End Tenancy for Cause issued on February 25, 2015 citing the tenant or a person permitted on the property by the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord and seriously jeopardized the health or safety or lawful right of another occupant or the landlord; and the tenant has engaged in illegal activity that has, or is likely to damage the landlord's property.

The landlord asserts the tenant has caused damage to the washing machine; two stoves; that the tenant leaves a window open during the winter; that the tenant yells at them for using a chemical spray; that the tenant smokes too much, in and out of the unit; and that other tenants do not want to live with this tenants.

The landlord did not provide any confirmation from an appliance specialist as to what caused the stoves and washing machine to be damaged or why they have attributed this damage to the tenant.

The landlord confirmed that there is no clause in the tenancy agreement that restricts smoking as a part of the tenancy. However, the landlord submits the tenant smokes too much; too many times inside and too close to windows and doors so that the smell comes into the residential property.

The landlord submits that the tenant leaves his window open during winter months when the heat is on. The tenant submits the landlord has removed the screen so that they can close his window from outside but he needs to have fresh air in his room when he sleeps.

The landlord submits that other tenants do not want to live with this tenant and that the tenant has yelled at them for the use of a chemical spray which the landlord submits she did not use.

The landlord has provided no evidence or testimony regarding what illegal act the tenant may have committed.

### Analysis

Section 47 of the *Act* allows a landlord to end a tenancy by giving notice to end the tenancy if one or more of the following applies:

- a) 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,
  - ii. Seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant, or
- b) The tenant or a person permitted on the residential property by the tenant has engaged in illegal activity that has caused or is likely to cause damage to the landlord's property.

The burden of proof is on the landlord to provide sufficient evidence to establish they have cause to end the tenancy for the reasons noted above.

As the landlord has not indicated through evidence or testimony that the tenant has committed any illegal activity, I find that the landlord cannot rely on the ground that the tenant has committed an illegal activity that has caused or is likely to cause damage to the landlord's property to end the tenancy.

I also note that since there is no clause in the tenancy agreement that restricts the tenant from smoking in and/or around the rental unit or residential property the landlord cannot use this as a ground to end the tenancy.

Further, I find that a tenant is granted exclusive possession of the rental unit when he moves in and the landlord has no ability under the *Act* to regulate how or when the tenant chooses to open his windows, at any time of year. As such, I find the landlord cannot use this as a ground to end the tenancy.

I also find the landlord has provided absolutely no evidence that tenant has caused the damage of either a washing machine or any stoves. Therefore I find the landlord cannot rely on this as a ground to end the tenancy.

And finally in relation to the landlord's assertion that the tenant has yelled at the landlord for the use of a chemical spray and that other tenants don't want to live with this tenant, I find that because the tenant disputes the landlord's testimony that other tenants don't want to live with and the landlord has provided no direct evidence, such as in person oral testimony from any other tenants, to corroborate this position I find the landlord has failed to provide sufficient evidence to establish this as a ground to end the tenancy.

### Conclusion

Based on the above, I find the landlord has failed to establish grounds to end the tenancy. I order that 1 Month Notice to End Tenancy for Cause issued by the landlord on February 25, 2015 is cancelled and the tenancy remains in full force and effect.

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 27, 2015

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Residential Tenancy Branch

