



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes MT, CNC, OLC, O

### Introduction

This hearing was convened by way of conference call concerning an application made by the tenant for more time to dispute a notice to end the tenancy, for an order cancelling a 1 Month Notice to End Tenancy for Cause and for an order that the landlord comply with the *Act*, regulation or tenancy agreement.

The landlord and the tenant attended the hearing and the landlord was accompanied by a witness who was identified as the owner of the rental unit. Each gave affirmed testimony, and evidentiary material has been provided. The parties were given the opportunity to question each other and the witness about the evidence and testimony given, 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 1 Month Notice to End Tenancy for Cause was issued in accordance with the *Residential Tenancy Act*?
- Should the landlord be ordered to comply with the *Act*, regulation or tenancy agreement, and more specifically to provide the tenant with access to the rental unit?
- Should the tenant be granted more time to dispute the notice to end the tenancy?

### Background and Evidence

**The landlord** testified that this month-to-month tenancy began on December 5, 2014 and the tenant still resides in the rental unit. Rent in the amount of \$637.50 is payable in advance on the 1<sup>st</sup> day of each month, and there are no rental arrears. At the outset of the tenancy the landlord collected a security deposit from the tenant in the amount of

\$300.00 which is still held in trust by the landlord, and no pet damage deposit was collected.

The landlord further testified that smoking is not permitted on the rental property. A copy of the tenancy agreement containing a 1-page Addendum has been provided, which states: "1. There will be no smoking anywhere on the above property." The tenant has been smoking, although had told the landlord at the outset of the tenancy that the tenant doesn't smoke. There was no evidence of smoking at first, but when the landlord attended at the rental unit to do some work, the landlord saw ashes in a chocolate box lid and in a can. Photographs have been provided. Another tenant was highly allergic and moved out as a result.

The rental unit is a bedroom in a house which shares common areas with other tenants, such as kitchen and bathroom facilities. The house is listed for sale and the tenant has not allowed real estate agents or prospective purchasers to see the rental unit. Letters from the parties and the real estate agent have been provided, and notice was given to the tenant on several occasions, usually resulting in no response from the tenant. The tenant had locked the door of his room from the inside and told the landlord later that he had been sleeping.

The landlord gave the tenant a letter in February, but has not provided a copy. The letter was very similar to a notice the landlord gave, but because the landlord did not know that the tenancy fell within the *Residential Tenancy Act*, the proper notice wasn't issued. The notice given is entitled "Notice to Quit Tenancy Agreement" and is dated March 7, 2015.

Then owner was in town for about a week and talked to the tenant on February 4, 2015. The tenant asked if he could stay and owner said yes, but he'd be watched on a week to week basis for smoking. He was watched and the tenant admitted smoking. The landlord resides about 10 minutes away and goes to the rental unit on a regular basis for inspections.

The landlord learned that because the owner does not share kitchen or bathroom facilities, the *Residential Tenancy Act* applies, and the tenant was personally served at the landlord's house with a 1 Month Notice to End Tenancy for Cause. A copy of the notice has been provided and it is dated March 29, 2015 and contains an effective date of vacancy of April 30, 2015. The reasons for issuing the notice 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;

- Breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.

**The landlord's witness** testified that he is the owner of the rental building and does not reside in the same community. He was at the rental property during the first week of February, 2015 because the other tenant moved out. That tenant said that she smelled cigarette smoke, and the owner took the tenant's word for it that he wasn't smoking. The owner has never once told the tenant it was okay to smoke on the property. The only times the owner has seen the tenant smoking was by a car park 4 lots away from the rental house, and the owner did not want smoke going in and around the house. When the owner received a photograph of the ashes found in the tenant's room, he was not aware that the *Residential Tenancy Act* applied and the Notice to Quit Tenancy Agreement was issued. The real estate agent also smelled smoke.

On or about February 5 or 6, 2015 the tenant told the owner that he had no place to go so the owner told him he would be given more time to find a place, and the parties would talk week to week about staying.

**The tenant** testified that he rarely smokes, but normally chews.

The tenant also testified that when the landlord attended the rental unit, she wanted the tenant out that night and wanted the key to the house returned. The tenant refused until the tenant's belongings had been retrieved. Then the owner phoned the tenant and the parties talked for about 15 or 20 minutes, and the owner said he'd be at the rental unit on the weekend, and the parties talked again. The tenant had booked a moving truck and was ready to go, but the owner said to keep talking to him. The tenant didn't have a place to go and the owner put the tenant on a week-to-week basis about the smoking issue, and the tenant cancelled the moving truck.

The tenant further testified that he has never locked the door to his room and doesn't have a key for it. The tenant talked to the real estate agent, who apologized to the tenant and said that he had knocked but no one answered. The real estate agent didn't try to open the door. The tenant didn't know he couldn't be present during a real estate showing.

The landlord took away the tenant's house key and the tenant couldn't access the house unless another person was there to let him in.

The tenant seeks an order cancelling the notice to end the tenancy given by the landlord.

## Analysis

The *Residential Tenancy Act* does not apply to tenancies where the owner shares kitchen or bathroom facilities with the tenant. In this case, the tenant shares kitchen and bathroom facilities, but not with the owner, and therefore, by virtue of collecting rent in exchange for a residential tenancy, the *Act* applies.

Where a tenant disputes a notice to end a tenancy, the onus is on the landlord to establish that it was issued in accordance with the *Act*, which can include the reasons for issuing it. In this case, I have reviewed the notice and I find that it is in the approved form and contains information required by the *Act*. With respect to the reasons for issuing it, I am satisfied that smoking is not permitted on the rental property and the parties agreed to that term in writing on December 3, 2014.

I refer to Residential Tenancy Branch Policy Guideline 11 – Amendment and Withdrawal of Notices, which states: “In order to be effective, a notice ending a tenancy must be clear, unambiguous and unconditional.”

In this case, the owner attended the rental unit on February 4, 2015 and had discussions with the tenant then and prior to that. The landlord issued a Notice to Quit Tenancy Agreement on March 7, 2015 believing that the *Act* didn’t apply, and then issued the 1 Month Notice to End Tenancy for Cause on March 29, 2015. The Notice to Quit Tenancy Agreement contains an effective date of vacancy of 30 days. Before the 30 days had expired, the landlord issued the notice in the approved form, effective April 30, 2015. The tenant was ready to move out at some point, having booked a moving truck, which is not disputed by the landlord, but the parties agreed to a week to week “probationary period,” which I find is not clear and is conditional. Further, what isn’t clear is whether or not the tenancy agreement was breached between the date that the parties agreed to the “probationary period” and the date that either of the notices were given to the tenant, or did the landlord and owner simply change their minds about whether or not to evict the tenant.

With respect to the real estate agent, I am not satisfied that the tenant locked the agent out of the rental room.

The tenant filed the Application for Dispute Resolution on March 13, 2015. The Notice to Quit Tenancy Agreement was issued on March 7, 2015 and the notice in the approved form was issued on March 29, 2015. I find that the tenant’s application serves as a dispute to the approved form of notice, and that the tenant has disputed the notice to end the tenancy within the 10 days as required by the *Act*, and the 1 Month Notice to End Tenancy for Cause is hereby cancelled and the tenancy continues.

I order the landlord to comply with Section 29 of the *Act* by giving the tenant written notice to enter the rental unit no less than 24 hours before such entry, and that the notice contain the date, time and reason for the entry, which must be reasonable.

I also order the landlord to provide the tenant with keys to allow access to and from the rental unit and common areas.

I order the parties to comply with all terms of the tenancy agreement, including the Addendum.

### Conclusion

For the reasons set out above, the 1 Month Notice to End Tenancy for Cause dated March 29, 2015 is hereby cancelled and the tenancy continues.

I order the landlord to comply with Section 29 of the *Act* by giving the tenant written notice to enter the rental unit no less than 24 hours before such entry, and that the notice contain the date, time and reason for the entry, which must be reasonable.

I order the landlord to provide the tenant with keys to allow access to and from the rental unit and common areas.

I order the parties to comply with all terms of the tenancy agreement, including the Addendum.

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: April 25, 2015

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Residential Tenancy Branch

