



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MT, CNC, O

### Introduction

A hearing was conducted by conference call in the presence of both parties. On the basis of the solemnly affirmed evidence presented at that hearing, a decision has been reached. All of the evidence was carefully considered.

Both parties were given a full opportunity to present evidence and make submissions. Neither party requested an adjournment or a Summons to Testify. Prior to concluding the hearing both parties acknowledged they had presented all of the relevant evidence that they wished to present.

I find that the one month Notice to End Tenancy was sufficiently served on the Tenant on February 24, 2015 by posting. Further I find that the Application for Dispute Resolution/Notice of Hearing was personally served on the landlord on or about March 6, 2015. With respect to each of the applicant's claims I find as follows:

The landlord stated she had previously provided a set of documents to the Residential Tenancy Branch. Those documents had not been placed on the file. The landlord identified the documents. At my request I asked her for fax copies of the documents with a notation to urgently forward them to me. The landlord was able to provide me with the documents on April 17, 2015. I have carefully considered all of the evidence including the landlord's documents which included:

- A tenant transfer request form of the downstairs tenant
- A letter dated February 20, 2015 from the landlord addressed to the tenant
- A letter dated February 23, 2015 from the downstairs tenant to the landlord
- A letter dated February 24, 2015 to the tenant.

Issue(s) to be Decided

The issue to be decided is whether the tenant is entitled to an order cancelling the Notice to End Tenancy dated February 24, 2015 and setting the end of tenancy for March 31, 2015?

Background and Evidence

The tenancy began on November 1, 2014. The tenancy agreement provided that the tenant(s) would pay rent of \$310 per month payable on the first day of each month. The tenant(s) paid a security deposit of \$429.

The tenant previously lived in a two bedroom unit with her son. There were problems relating to the son's smoking causing health problem to an upstairs tenant (as a result of allergies) and they were transferred to another unit. Problems continued with the son and the landlord served a Notice to End Tenancy on the tenant. The parties subsequently agreed that the son would vacate the rental unit and the tenant would be transferred to a one bedroom unit.

The landlord seeks to end the tenancy based on the following:

- The history of problems in dealing with this tenant and her son. The landlord testified the building is a no smoking building. She has received a number of complaints of the smoking of marijuana by the tenant or guests permitted in the unit by the tenant.
- Witness #1 lives immediately underneath the tenant. She testified as follows:
  - Approximately twice a week the tenant would have parties which unreasonably disturbed her.
  - The tenant walks heavily and this often disturbs her.
  - She smells marijuana and other smoke which she believes is coming from the tenant's rental unit.

The Property Manager acknowledged that she does not have first hand knowledge of the tenant or her son smoking marijuana in the unit although she has received a number of complaints from tenants. The Building Manager lives in an adjacent building. He does not have first hand knowledge of the smoking of marijuana by the tenant or her son.

The agent for the tenant disputes the evidence of the landlord as follows:

- Her mother is over 50 years old and suffers from depression. Her mother does not and has never smoked.
- They received a complaint letter from the downstairs tenant alleging a partying continued to 4:00 a.m. on February 22, 2015. She, her husband and infant son visited her mother and had dinner the night before. They left at around 11:30 p.m. No one was smoking in the rental unit. A party did not take place.
- The son who was the problem in the previous tenants does not live with his mother and for the most part stays away. He visits his mother once every two weeks. On other occasions he will pick up his mother and transport her to her daughters place for a visit.
- The noise complaint is caused by problems with the floor. The tenants have asked that the landlord repairs the problem but the landlord has failed to do so.
- They have noticed the smell of marijuana coming from other rental units in the vicinity.
- The tenant welcomes the landlord to inspect the rental unit for the presence of marijuana.

### Grounds for Termination

The Notice to End Tenancy relies on section 47(1)(e) and (h) of the Residential Tenancy Act. That section provides as follows:

Landlord's notice: cause

47 (1) A landlord may end a tenancy by giving notice to end the tenancy if one or

more of the following applies:

...

- (e) the tenant or a person permitted on the residential property by the tenant has engaged in illegal activity that
  - (i) has caused or is likely to cause damage to the landlord's property,
  - (ii) has adversely affected or is likely to adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant of the residential property, or
  - (iii) has jeopardized or is likely to jeopardize a lawful right or interest of another occupant or the landlord;
- (h) the tenant
  - (i) has failed to comply with a material term, and
  - (ii) has not corrected the situation within a reasonable time after the landlord gives written notice to do so;

### Analysis

After carefully considering all of the evidence presented at the hearing I have determined the landlord has failed to establish sufficient cause to end the tenancy for the following reasons:

- The landlord has failed to prove the tenant or someone permitted in the rental unit by the tenant has been smoking marijuana or cigarettes in the rental unit. The Property Manager and the Building Manager were unable to provide first hand evidence as to the presence of marijuana or cigarettes. I accept the evidence of the tenant's agent that her mother does not smoke. The tenant's son is seldom in the rental unit and was not present on the date of the complaint given by Witness #1. I accept the evidence of the agent for the tenant that she has smelled marijuana coming from other units in the rental property. The evidence of the downstairs tenant is not sufficiently certain that I can determine that the downstairs tenant's complaint of marijuana smoke originates from smoke from the tenant's rental unit.
- While the tenant is responsible for those she has permitted in the rental unit the landlord has not established on a balance of probabilities that the tenant and/or guests have smoked in the rental unit.

- I am not satisfied that the presence of the tenant moving upstairs in her rental unit is sufficient to end the tenancy. Based on the evidence presented it amounts to normal use. There is no intention to disturb the downstairs tenant. The better explanation is that the noise problems can be reduced if the landlord fixes the tiles. In any event this evidence does not support a ground raised by the landlord in the Notice to End Tenancy.

#### Determination and Orders

After carefully considering all of the evidence I determined that the landlord has failed to establish sufficient cause to end the tenancy. As a result I ordered that the Notice to End Tenancy dated February 24, 2015 be cancelled. The tenancy shall continue with the rights and obligations of the parties remaining unchanged.

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 20, 2015

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Residential Tenancy Branch

