



# 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 in response to an application by the Tenant pursuant to section 47 of the *Residential Tenancy Act* (the "Act") for Order cancelling a notice to end tenancy.

The Landlord and Tenant were each given full opportunity under oath to be heard, to present evidence and to make submissions. Neither Party provided any documentary evidence other than the copy of the notice to end tenancy provided by the Tenant.

### Issue(s) to be Decided

Is the notice to end tenancy valid?

Is the Tenant entitled to a cancellation of the notice to end tenancy?

### Background and Evidence

The tenancy started in 2012. Rent of \$450.00 is payable monthly. On May 11, 2015 the Landlord served the Tenant personally with a one month notice to end tenancy for cause (the "Notice"). The Notice contains two reasons:

- 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
- The Tenant has engaged in an illegal activity that has, or is likely to adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant or the Landlord.

The Landlord states that the illegal activity is in relation to the Tenant or tenants smoking in the unit and that the unit is non-smoking.

The Landlord states that the Tenant has been in a lot of confrontations with new tenants, that the Tenant yells and sometimes swears and that as a result the other tenants yell back at the Tenant. The Landlord states that the Tenant's behavior has caused significant turnover in other tenants. The Landlord states that one tenant who had been in the unit for 3 months left about 8 months ago due to the conflict with the Tenant. Another tenant who had been in the unit for a month left several months ago after informing the Landlord that the Tenant had yelled and caused the tenant to be uncomfortable.

The Landlord states that in the last 6 months only one or two complaints have been made and that one complaint was from a tenant who was evicted on an unrelated cause. The Landlord states that in the last 6 months no other tenant has left or wants the Tenant to move-out. The Landlord states that he verbally warned the Tenant about his behavior on several occasions in the past but only once or twice in the past 6 months. The Landlord states that the Tenant was never told that he would be evicted in the past 6 months. The Landlord states that the Tenant recently informed the Landlord that he was seeking medical help for some type of anxiety and that the Landlord believes that now things should be ok. The Landlord states that the Tenant is otherwise a good, quiet, clean and paying Tenant.

The Tenant states that he only swore at one tenant on one occasion and that was when the tenant was smoking heavily and constantly just outside the Tenant's window on an uninsured balcony. The Tenant states that prior to the hearing he did not know the basis for the reasons listed on the notice and thought it was about the Tenant's complaint of noise by other tenants. The Tenant states that he did yell most recently at the Landlord and another tenant who were smoking and talking outside his window for over 20 minutes close to midnight. The Tenant states that the yells however were not loud enough to wake up the neighbour as the Tenant confirmed with the neighbour the next day that she had not been waken up. The Tenant states that since starting his medication for anxiety he is becoming more laid back.

### Analysis

Section 47 of the Act provides that a landlord may end a tenancy where the landlord has cause as set out in that section. Where a notice to end tenancy issued by the landlord comes under dispute, the landlord has the burden to prove, on a balance of probabilities, that the tenancy should end for the reason or reasons indicated on the Notice and that at least one reason must

constitute sufficient cause for the Notice to be valid. As the issue of smoking in a non-smoking unit is a contractual dispute I find that the Landlord has not substantiated illegal activity as a reason to end the tenancy.

While I accept that the Tenant's behavior in confronting people could be disturbing, I do not find the evidence of one or two occasions of yelling in the past 6 months to be evidence of significant disturbance. I also take into account the Tenant's evidence of what caused the recent outburst and consider that some provocation occurred by the presence of smoke and talking outside the Tenant's window late at night. While the Landlord gives evidence of a loss of tenants due to the Tenant's behavior and while this may be considered as having an impact on the Landlord's lawful right, this reason is not a reason included in the Notice and this evidence is not relevant to the determination of whether there was significant interference or unreasonable disturbance. I further consider that the disruptions occurred several to six months ago, the Landlord did not seek to end the tenancy at that time, and that no other tenants have left or complained since. I find therefore that the Landlord has not substantiated that the Tenant significantly interfered with another occupant or the landlord.

As neither of the reasons for the Notice has been substantiated, I find that the Notice is not valid and that the Tenant is entitled to a cancellation of the Notice. The tenancy continues.

### Conclusion

The Notice is cancelled.

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: July 03, 2015

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Residential Tenancy Branch

