



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes

CNC

### Introduction

This hearing dealt with the tenant's application to cancel a notice to end tenancy for cause. The tenant and the landlord participated in the teleconference hearing.

At the outset of the hearing, each party confirmed that they had received the other party's evidence. Neither party raised any issues regarding service of the application or the evidence. Both parties were given full opportunity to give affirmed testimony and present their evidence. I have reviewed all testimony and other evidence. However, in this decision I only describe the evidence relevant to the issues and findings in this matter.

### Issue(s) to be Decided

Is the notice to end tenancy valid?

### Background and Evidence

On July 16, 2015 the landlord served the tenant with a notice to end tenancy for cause. The notice indicates that the reasons for ending the tenancy are as follows:

- 1) the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord;
- 2) the tenant has seriously jeopardized the health, safety or lawful right of another occupant or the landlord;
- 3) the tenant has put the landlord's property at significant risk; and
- 4) the tenant has assigned or sublet the rental unit without the landlord's written consent.

The landlord stated that the main reason for serving the notice to end tenancy was a fire on the fence in the back alley where the tenant smokes. The landlord stated that a neighbour saw a fire on the back fence, and it was in the area where the tenant smokes. The landlord stated that the tenant took out the smoke detector in the rental unit, and the tenant's daughter smokes inside. The landlord also stated that the police came to the house in the middle of the night looking for the tenant.

The tenant denied starting the fire on the fence. The tenant submitted a photograph showing a small smoke-blackened area at the bottom of a fence, and a sand pit approximately one meter from the burned area, where the tenant was butting out her cigarettes. The tenant submitted that she had not even gone outside for a smoke yet the day that the fire occurred. The tenant stated that the alley is heavily frequented by locals and strangers and a lot of them smoke.

The tenant stated that she does not smoke in the house, and she seriously reprimanded her daughter for smoking. The tenant submitted that she has not assigned or sublet the unit, and the only people living there with her are her daughter and her son. The tenant stated that the police came on one occasion because her son was on probation at the time and they were doing a curfew check, but his probation is now done.

### Analysis

I find that the notice to end tenancy is not valid. The landlord did not provide any clear evidence that the tenant caused the fire in the alley. Nor did the landlord provide clear evidence that the tenant had in some way put the property or the landlord's health or safety at serious risk or that she had assigned or sublet the unit. If the tenant committed a breach of the tenancy agreement, by removing the smoke detector or allowing someone to smoke in the unit, the landlord ought to have given the tenant a written notice of the breach and allowed the tenant reasonable time to correct the breach.

### Conclusion

I cancel the notice to end tenancy for cause dated July 16, 2015. The tenancy continues until such time as it ends in accordance with the Act.

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: September 28, 2015

---

Residential Tenancy Branch

