



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding 8868 INVESTMENTS LTD.  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      CNC

### Introduction

This hearing dealt with an Application for Dispute Resolution under the *Residential Tenancy Act* (the “Act”) by the tenant to cancel a 1 Month Notice to End Tenancy for Cause (the “1 Month Notice”) dated July 31, 2015.

The hearing began on October 15, 2015 and was adjourned to allow for the service of evidence as per my three orders in my Interim Decision dated October 15, 2015 which should be read in conjunction with this decision.

During both dated of the hearing, the tenant, legal counsel for the tenant, an agent for the landlord and an operations manager for the landlord attended the teleconference hearing. At the reconvened portion of the hearing held on December 8, 2015, I was satisfied that the parties had been sufficient served with the Notice of Hearing, Application for Disputed Resolution and documentary evidence and that both parties had the opportunity to review all documents.

### Issue to be Decided

- Should the 1 Month Notice be cancelled?

### Background and Evidence

The parties agreed that a fixed term tenancy agreement began on August 1, 2004 and reverted to a month to month tenancy after July 31, 2005. Monthly rent in the amount of \$1,265 is currently due on the first day of each month. A security deposit of \$467.50 was originally paid by the tenant at the start of the tenancy, which the landlord continues to hold.

The tenant confirmed receiving a 1 Month Notice dated July 31, 2015 from the landlord on July 31, 2015. On that 1 Month Notice, the effective vacancy date is August 31, 2015. In the 1 Month Notice, the landlord has alleged three causes including:

1. The tenant or a person permitted on the property by the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord.
2. The 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.
3. The tenant or a person permitted on the property by the tenant has put the landlord's property at significant risk.

The tenant stated that he was disputing all three causes listed on the 1 Month Notice.

Regarding the first cause, the agent and operations manager referred to three letters submitted in evidence dated November 19, 2010, January 10, 2010 and November 27, 2013 respectively. The first letter dated November 19, 2010 submitted in evidence relates to smoking in the building. There was no dispute that the tenant's tenancy agreement did not prohibit smoking in the rental unit.

The operations manager testified that the November 19, 2010 letter was in response to complaints about second hand smoke in the building coming from his suite and describes the building as a non-smoking building in the letter. Regarding the second letter dated January 10, 2010, the letter refers to a complaint put into the office about the smoke coming from the tenant's suite and that the building is a smoke free building. The third letter dated November 27, 2013 is about the tenant being unresponsive when his smoke detector went off and when the manager entered the tenant's rental unit, they took a pot off the stove with no water and an egg on the stove burning and that they had to open the windows and patio door to release the smoke.

Regarding cause one, this was dismissed due to insufficient evidence during the hearing which will be described further below.

Regarding causes two and three, the operations manager referred to several photos submitted in evidence which the operations manager claim to show burn marks and food on the floor. Legal counsel asked how long the operations manager had been working in the rental unit, which the operations manager confirmed was one year and eleven months. Regarding the carpet in the rental unit, legal counsel asked if the original condition inspection report was submitted in evidence, which the operations manager confirmed it had not been.

The operations manager confirmed under oath that he has never seen the tenant drop a cigarette in the rental unit and the agent and the operations manager confirmed that the tenant has not caused any fires.

Both parties confirmed that the tenant has placed extra carpet and a hard plastic mat over the original carpet and the secondary carpet installed over the tenant's area of the rental unit in which he smokes. The operations manager referred to a photo which appears to show a burn mark in the sofa, which the tenant denied that he caused or than any guest of his had caused. The tenant denies every smoking in bed or any guest smoking in his bed.

The agent for the landlord wrote in a letter dated June 11, 2015 submitted in evidence that the landlord "may have to commence the eviction process to ensure the safety of the other tenants in the building unless you can provide evidence that you are capable of independent living and safeguarding your suite and not endangering your neighbours." Legal counsel stated that the landlord is victim blaming the tenant and that that tenant does not have to prove he is independent and that being elderly is not a reason to evict someone. The operations manager stressed that the building is not a care facility.

### Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows.

The tenant applied within the timelines provided for under section 47 of the *Act* to dispute the 1 Month Notice. As a result, the onus of proof reverts to the landlord to prove that the 1 Month Notice is valid. If the landlord fails to provide sufficient evidence, the 1 Month Notice will be cancelled.

As noted above, the first cause was dismissed due to insufficient evidence as the landlord referred to three letters, two of which date back to 2010, and the most recent letter dating back to November of 2013. A matter that dates back that far does not constitute "significant interference" by issuing a 1 Month Notice in July of 2015.

Regarding causes two and three, the operations manager confirmed that he was relying on the same evidence in support of causes two and three. I find that the landlord has failed to provide sufficient evidence to support causes two and three. I have reached this finding by considering that the tenant has not caused a fire to date, there was no

condition inspection report submitted by the landlord to support the condition of the rental unit at the start of the tenancy, the landlord has not seen the tenant drop a cigarette, and that the tenant has been living in the rental unit and has been smoking in the rental unit since 2004. I have also considered that the tenant has installed a secondary carpet and hard plastic chair mat to protect the area he smokes within the rental unit. Furthermore, I find the letter written by the landlord requiring the tenant to prove that he is independent or face eviction to be unreasonable and not in keeping with the *Act*. Therefore, **I cancel** the 1 Month Notice dated July 31, 2015.

**I order** the tenancy to continue until ended in accordance with the *Act*.

### Conclusion

The 1 Month Notice issued by the landlord dated July 31, 2015, has been cancelled and is of no force or effect.

The tenancy has been ordered to continue until ended in accordance with the *Act*.

This decision is final and binding on the parties, unless otherwise provided under the *Act*, and 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: December 18, 2015

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Residential Tenancy Branch

