



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNC, OPC

### Introduction

This hearing was convened in response to applications by the landlord and the tenant.

The landlord's application is seeking orders as follows:

1. Is the landlord entitled to an order of possession; and
2. To recover the cost of filing the application.

The tenant's application is seeking orders as follows:

1. Should the 1 Month Notice to End Tenancy for Cause (the "Notice") issued on November 27, 2015, be cancelled?

Both parties appeared, gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions at the hearing.

In a case where a tenant has applied to cancel a Notice, Rule 7.18 of the Residential Tenancy Branch Rules of Procedure require the landlord to provide their evidence submission first, as the landlord has the burden of proving cause sufficient to terminate the tenancy for the reasons given on the Notice.

I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure. I refer only to the relevant facts and issues in this decision.

### Issues to be Decided

Should the Notice be cancelled?  
Is the landlord entitled to an order of possession?

### Background and Evidence

The parties agreed that the Notice was served on the tenant indicating that the tenant is required to vacate the rental unit on December 31, 2015.

The reason stated in the Notice was that the tenant has:

- significantly interfered with or unreasonably disturbed another occupant or the landlord;
- seriously jeopardized the health or safety or lawful right of another occupant or the landlord;
- put the landlord's property at significant risk; and
- the tenant has engaged in 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 testified that tenant is very abusive to other tenants when they have been drinking. The landlord stated the tenant also attempts to hug the occupants and this action upsets some of the occupants and when they ask the tenant to stop the tenant starts to verbally abuse them.

The landlord testified that on November 5, 2015, at 12:30 in the afternoon the tenant was already drunk and drinking beer in the lobby. The landlord stated that they approached the tenant and took away the beer and the tenant yelled and screamed at them using very foul language and other occupants were afraid to use the common area.

The landlord testified that on November 6, 2015, they were in their apartment when the tenant buzzed at the outside door as they had forgotten their keys, which is a regular occurrence. The landlord stated that in the past the tenant would stop off on their floor and pick up the key to their unit; however on this day they did not. The landlord stated that they got busy with another occupant in the office and the tenant came to their office drunk, yelling and again calling them names using foul language because they did attend at the tenant's residence to open the door.

The landlord testified that the tenant has also has put the landlord's property at serious risk as they tamper with the fire system. The landlord stated that on two occasions the smoke detector in the tenant apartment was found to be removed and broken. The landlord stated that the tenant keeps telling them that smoke detector is faulty, however, each time they have replaced the detector with a new detector and were tested when installed. The landlord stated that if the smoke detectors were going off, it is because the tenant is doing something to set them off.

The landlord testified that at the annual fire inspection on November 18, 2015, the fire department found the tenant's smoke detector taped making it nonfunctioning, which again was replaced by the fire department. Filed in evidence are photographs of the smoke detector taped.

The landlord stated that also there has been a sign of drug use, in the tenant's apartment. The landlord stated they no longer want to continue the tenancy.

In support of the landlord's Notice are several witness statements.

The tenant does not deny they were drinking a beer in the lobby. The tenant stated they had just gotten off work. The tenant denies calling the landlord names.

The tenant denies attending the landlord's office and calling them names.

The tenant testified that what is wrong about given people hugs. The tenant stated that this building is for 55 plus and some of the occupants put out their arms for hugs.

The tenant does not deny they removed and also placed tape over the smoke detectors. The tenant stated that the detector was faulty because when they would have a shower or cook it would go off. The tenant stated that they have a pet budgie and their bird would get upset at the sound of the detector and wanted to make sure that the detector would not go off when they were not home. The tenant stated that since the fire department replaced the detector it has not gone off.

The tenant testified that their friend may have been doing drugs, when they were living in a different rental unit within the building; however, they have not been in this unit.

### Analysis

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

How to end a tenancy is defined in Part 4 of the Act. Section 47(1) of the Act a landlord may end a tenancy by giving notice to end the tenancy.

I have considered all of the written and oral submissions submitted at this hearing, I find that the landlord has provided sufficient evidence to show that the tenant has:

- significantly interfered with or unreasonably disturbed another occupant or the landlord;

- seriously jeopardized the health or safety or lawful right of another occupant or the landlord;
- put the landlord's property at significant risk; and
- the tenant has engaged in 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.

In this case, the tenant has admitted drinking in the common area, although I accept the tenant's evidence that they had just gotten off work. I find it not a reasonable explanation for being drunk and drinking in a public area or engaging in inappropriate name calling and unreasonable disturbing other occupants and the landlord when asked to stop.

Further, although I accept some occupants may enjoy a hug from the tenant, I also find it reasonable that other occupants would find it unreasonable and inappropriate and when asked to stop to called them in appropriate name.

Furthermore, I accept the landlord evidence over the tenant's evidence that the tenant attend the landlord's office and was causing a disturbance by yelling and swearing, as this is support by witness statements. I find the tenant's action inappropriate and was an unreasonable disturbance.

Furthermore, I find removing and tampering with the smoke detectors by taping them so they do not operate puts the landlord's property at significant risk and seriously jeopardized the safety of all occupant of the building. I find it is not the tenant's right to determine if the detector is faulty or not. That is the landlord responsibility.

Based on the above, I find the Notice issued on November 27, 2015, has been proven by the landlord and is valid and enforceable. Therefore, I find the tenancy legally ended on December 31, 2015, and the tenant is now overholding the rental premises.

Therefore, I dismiss the tenant's application to cancel the Notice issued on November 27, 2015.

As the tenancy legally ended, I find the landlord is entitled to an order of possession, pursuant to section 55 of the Act, effective **two days** after service on the tenant.

Since the landlord have has been successful with their application, I find the landlord is entitled to recover the cost of filing their application from the tenant. Therefore, I grant the landlord a monetary order in the amount of **\$50.00** and the landlord is authorized to deduct that amount from the tenant's security deposit if full satisfaction of this award.

### Conclusion

The tenant's application to cancel the Notice, issued on November 27, 2015, is dismissed.

The landlord is granted an order of possession. I grant the landlord a monetary order for the cost of filing their application and the landlord is authorized to deduct that amount from the tenant's security deposit in full satisfaction of this award.

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: January 28, 2016

---

Residential Tenancy Branch

