



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNC, OPC, FF

### Introduction

This hearing was convened in response to an application by the Tenant and an application by the Landlord pursuant to the *Residential Tenancy Act* (the "Act").

The Tenant applied on December 23, 2015 for:

1. An Order cancelling a notice to end tenancy - Section 47.

The Landlord applied on January 5, 2016 for:

1. An Order of Possession - Section 55; and
2. An Order to recover the filing fee for this application - Section 72.

The Tenant and Landlord were each given full opportunity to be heard, to present evidence and to make submissions.

### Issue(s) to be Decided

Does the Landlord have sufficient evidence to end the tenancy for cause?

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

### Background and Evidence

The tenancy started on May 1, 2012. Rent of \$700.00 was originally payable monthly on the first day of the month. The Parties agreed to raise the rent to \$750.00 sometime in the past two years and the Landlord states that this was because the Tenant failed to carry out required tasks under the original agreement on rent. On December 22, 2015

the Landlord gave the Tenant a one month notice to end tenancy for cause with two reasons to end the tenancy noted on the second page.

The Landlord states that the Tenant has been verbally abusive to the Landlord. The Landlord relates three incidents on July 29, August 2, and August 28, 2015 during which the Tenant alternatively yelled and swore at the Landlord. The Landlord states that this has caused the Landlord to feel stress. The Tenant does not dispute the three incidents and argues that the behavior was understandable because the Tenant was upset.

The Landlord states that the Tenant has been smoking marihuana in the unit contrary to the tenancy agreement and that this activity affects the physical well-being of the Landlord who experiences severe headaches from the smoke. The Landlord provides a physician's note that indicates that the Tenant is being adversely affected. The Landlord states that this smoking started approximately two years ago. The Landlord states that the Tenant has smoked marihuana outside the unit in front of the neighbor. The Tenant states that he has never smoked marihuana and only smokes cigarettes outside the unit. The Tenant states that the Landlord falsified the tenancy agreement to add the provision in relation to drugs.

The Landlord provides a letter from a physician dated November 16, 2015 noting exposure to cigarette and marihuana smoke has an "adverse effect" on the Tenant and that an attendant is "adversely affecting" the Tenant's emotional health.

The Landlord states that since the onset of the tenancy the Tenant has told the Landlord things that are disturbing or upsetting to the Landlord such as bringing call girls to the unit and owning brass knuckles. The Tenant denies this.

The Landlord states that they are aged and are at the time where they need help with the yard and other tasks such as driving the Landlords. The Landlord states that she is tired of the stress caused by the Tenant and just wants him out so that one of her grandchildren can move into the unit to assist with helping the Landlord.

The Parties agree that the Landlord refused to accept the rent for February 2015. The Landlord agrees to accept this payment and will issue a receipt for this payment indicating that the monies are being accepted solely for use and occupancy until this dispute is resolved.

### Analysis

Section 47 of the Act provides that a landlord may end a tenancy where a tenant has, inter alia, seriously jeopardized the health or safety or a lawful right or interest of the landlord; or where a tenant has engaged in illegal activity that 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. Where a landlord seeks to end a tenancy the burden of proof lies with the landlord. Although the Landlord related stories told by the Tenant, given that these occurred right from the onset of the tenancy and no action was taken I cannot find that, even if these stories were told by the Tenant, that the stories significantly bothered the Landlord.

As much as it is disturbing and insulting for the Landlord to be sworn or yelled at, it does not seem plausible that three incidents would cause serious jeopardy to the Landlord's health. I note that the physician's letter refers to an attendant who is "emotionally abusing" such that it is adversely affecting the Landlord's emotional health. I also note that this letter appears to be based on self-reporting and that there is no reference to how the Landlord's health has been adversely affected. This letter is not helpful in supporting that the Landlord's health faces serious jeopardy.

The Landlord has not provided any witness evidence to support the smoking of marihuana or cigarettes inside the unit and the Tenant provided equally believable evidence that he does not do so. Given the evidence of the Landlord's age and need for assistance with living I find that it is more likely that the Landlord simply wants this tenancy to end because the Tenant is bothersome and the Landlord has family

members who can assist them better. This reason however, while valid under a different section of the Act, is not a reason to end the tenancy for cause.

For the above reasons I find that the Landlord has not provided sufficient evidence to substantiate that the reasons on the Notice are valid and I find that the Tenant is therefore entitled to its cancellation.

### Conclusion

The Notice is not valid and is cancelled. The tenancy continues.

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: February 10, 2016

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Residential Tenancy Branch

