



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding Ajay Biporria Enterprises Ltd.  
and [tenant name suppressed to protect privacy]

## DECISION

Dispute Codes      CNC, O

### Introduction

This hearing was convened by way of conference call concerning an application made by the tenant seeking an order cancelling a notice to end the tenancy for cause, and other considerations.

An agent for the landlord company and a property manager attended the hearing. The tenant also attended. The property manager is named as a landlord in the Tenant's Application for Dispute Resolution, however during the course of the hearing the parties agreed that the application should be amended to change the surname of that landlord, and the Style of Cause on the frontal page of this Decision reflects that amendment.

The tenant and the named landlord each gave affirmed testimony and were given the opportunity to question each other respecting the evidence and testimony provided, all of which has been reviewed and is considered in this Decision. The parties and the landlord's agent were also given the opportunity to give submissions and discuss settlement.

No issues with respect to service or delivery of documents or evidence were raised.

### Issue(s) to be Decided

Has the landlord established that the 1 Month Notice to End Tenancy for Cause was issued in accordance with the *Residential Tenancy Act*?

### Background and Evidence

**The landlord** testified that this month-to-month tenancy began on September 15, 2015 and the tenant still resides in the rental unit. Rent in the amount of \$1,350.00 per month is payable on the 1<sup>st</sup> day of each month. At the outset of the tenancy the landlord collected a security deposit from the tenant in the amount of \$675.00 which is still held

in trust by the landlord, and no pet damage deposit was collected. The rental unit is a suite on the bottom floor of a complex containing another bottom floor suite and an upper level suite. A copy of the tenancy agreement has been provided.

The landlord further testified that on March 1, 2016 the landlord taped a 1 Month Notice to End Tenancy for Cause to the door of the rental unit. A copy has been provided and it is dated March 1, 2016 and contains an effective date of vacancy of April 1, 2016, and the landlord testified that she has learned that the effective date of vacancy ought to read April 30, 2016. The notice is addressed to the tenant and contains an address of the rental unit, but does not contain a name, address or phone number of a landlord. The reasons for issuing it state on page 2 of the form:

“Unpaid rent” (in handwriting at the top);

- Tenant or a person permitted on the property by the tenant has:
  - significantly interfered with or unreasonably disturbed another occupant or the landlord;

Beside which someone has written: “smoking pot inside house.”

- 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 further testified that there have been several complaints by other units of loud music, heavy traffic and smoking marihuana in the rental unit. A copy of a letter from a neighbouring tenant has been provided. The tenant has also sent to the landlord threatening text messages calling the landlord names. Copies of text messages exchanged between the parties have also been provided. The landlord testified that she was fearful of her safety.

The text messages referred to a payment plan of rent, and the tenant disagreed with the landlord’s refusal to accept the plan. The tenant gave rent to the landlord’s nephew to give to the landlord, but the landlord refused it saying that it was the responsibility of the tenant to pay rent directly to the landlord, not through another person. The tenant is now in arrears of rent the sum of \$2,700.00 for March and April, 2016 and the landlord was not able to get information from the Residential Tenancy Branch about how to deal with unpaid rent, so the landlord wrote it on top of page 2 of the 1 Month Notice to End Tenancy for Cause.

**The tenant** testified that he tried to pay rent to the landlord, but the landlord wouldn't accept it. The tenant then gave the rent money to the landlord's nephew, who was available to testify, but did not. The landlord refused the money from her nephew.

The tenant also testified that he has a license due to epilepsy for marihuana use, but the only time he has smoked it inside the rental unit was with the owner of the rental building. Out of respect for others, the tenant does not smoke it inside the rental unit.

The tenant further testified that the neighbouring tenant who wrote the letter was evicted for smoking crack and not paying rent, and was a friend of the landlord.

The tenant seeks an order cancelling the notice to end the tenancy and recovery of the \$100.00 filing fee.

### Analysis

Where a notice to end a tenancy given by a landlord is disputed by a tenant, the onus is on the landlord to establish that the notice was given in accordance with the *Residential Tenancy Act*, which can include the reasons for issuing it. I have reviewed the notice and find that it is in the approved form, but it does not contain a name or address of a landlord.

With respect to the reasons for issuing the notice, the tenant testified that he has a license for smoking marihuana, and the landlord did not dispute that or question it. Further, the tenant testified that the only time he smoked marihuana in the rental unit was with the agent and owner of the landlord company, which also was not disputed by the landlord.

In the circumstances, I am not satisfied that the tenant has engaged in any illegal activity.

With respect to the first reason for issuing the notice, "Tenant or a person permitted on the property by the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord," I have read the letter of the neighbouring tenant, however the tenant also testified that the neighbouring tenant was doing drugs and has moved out. I have also read the text messages and I see nothing threatening that might be disturbing to the landlord or any other persons. The worst statement in the tenant's text messages to the landlord is: "ur such a dumb goof bitcu," which I take to mean, in context that the tenant called the landlord a dumb goof for refusing to accept half of the rent early and the other half 2 weeks later. I am not satisfied that the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord.

The notice to end tenancy is cancelled, and the tenancy continues.

Since the tenant has been successful with the application, the tenant is also entitled to recovery of the \$100.00 filing fee. I grant a monetary order in favour of the tenant in that amount and I order that the tenant be permitted to reduce rent for a future month by that amount or may otherwise recover it.

### Conclusion

For the reasons set out above, the 1 Month Notice to End Tenancy for Cause dated March 1, 2016 is hereby cancelled and the tenancy continues.

I hereby grant a monetary order in favour of the tenant as against the landlord pursuant to Section 67 of the *Residential Tenancy Act*, and I order that the tenant be permitted to reduce rent for a future month by that amount as recovery, or may otherwise recover it.

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: April 20, 2016

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Residential Tenancy Branch