



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding Castera Properties  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      CNC

### Introduction

This hearing dealt with the tenant's Application for Dispute Resolution seeking to cancel a notice to end tenancy.

The hearing was conducted via teleconference and was attended by the tenant and the landlord. While the tenant had arranged for a witness to be present he was not called to provide any testimony.

The tenant indicated that she had submitted a package of 35 pages of evidence. I advised that I had not received any such package. I have not considered any such evidence in this decision.

I note that Section 55 of the *Residential Tenancy Act (Act)* requires that when a tenant submits an Application for Dispute Resolution seeking to cancel a notice to end tenancy issued by a landlord I must consider if the landlord is entitled to an order of possession if the Application is dismissed and the landlord has issued a notice to end tenancy that is compliant with the *Act*.

### Issue(s) to be Decided

The issues to be decided are whether the tenant is entitled to cancel a 1 Month Notice to End Tenancy for Cause, pursuant to Section 47 of the *Act*.

Should the tenant be unsuccessful in seeking to cancel the 1 Month Notice to End Tenancy for Cause it must also be decided if the landlord is entitled to an order of possession pursuant to Section 55(1) of the *Act*.

### Background and Evidence

The parties agreed the tenancy began on November 1, 2013 as a 1 year fixed term tenancy that converted to a month to month tenancy on November 1, 2014. The current monthly rent is \$758.00 due on the 1<sup>st</sup> of each month with a security deposit of \$362.50 paid.

The tenant submitted into evidence a copy of a 1 Month Notice to End Tenancy for Cause issued by the landlord on July 1, 2016 with an effective vacancy date of August 1, 2016 citing 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 or jeopardize the lawful right of another occupant or the landlord and the tenant has not done required repairs of damage to the unit.

The landlord submitted that the primary reason for ending the tenancy is that the tenant has refused to clean the carpet in the rental unit as part of their regular requirements to maintain the rental unit. The landlord confirmed there is no specific requirement in the tenancy agreement to have the carpets cleaned on a regular basis. He stated that the requirement is as per Section 32 of the *Act* that requires the tenant to maintain the unit.

The landlord submits that further the tenant had posted a handwritten notice that provides derogatory remarks and information regarding the agent. The landlord also submitted that the tenant smoked marijuana and disturbed other occupants including an elderly resident and a neighbour with a young son.

In support of the landlord's position they have submitted into evidence a chronology of events up to and including July 1, 2016 and then some general statements about events in July 2016; a copy of handwritten notice with remarks about the agent; and various warnings including some for the month of July 2016.

The tenant disputes all of the landlord's testimony. However, she stated that she had arranged for her carpets to be cleaned on July 2, 2016 but when she received the 1 Month Notice she cancelled the carpet cleaners.

### Analysis

Section 47 of the *Act* allows a landlord to end a tenancy by giving notice to end the tenancy if the tenant or a person permitted on the residential property by the 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, or has jeopardized or is likely to jeopardize a lawful right or interest of another occupant or the landlord or the tenant does not repair damage to the rental unit or other residential property, as required under section 32(3), within a reasonable time.

When one party to a dispute provides testimony regarding circumstances related to a tenancy and the other party provides an equally plausible account of those circumstances, the party making the claim has the burden of providing additional evidence to support their position.

Despite the landlord's testimony that certain events have occurred prior to the issuance of this Notice to End Tenancy, I find the landlord has failed to establish that the tenant has participated in an illegal activity.

While the landlord has indicated the tenant has smoked marijuana in the rental unit the tenant disputes this claim and the landlord has provided no corroborating evidence to support the assertion.

The landlord also asserts that it was the tenant posted the handwritten derogatory notice and the tenant disputes that she wrote it. The landlord has provided no evidence to establish that it was in fact the tenant who wrote and posted the notice. Furthermore, the landlord has failed to provide any evidence to substantiate that the production and/or distribution of the notice was illegal.

As a result, I find the landlord cannot establish that the tenant has participated in an illegal activity. As such, I find the landlord cannot rely on the illegal activity that has affected or is likely to adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant of the residential property, or has jeopardized or is likely to jeopardize a lawful right or interest of another occupant.

Section 32(2) states a tenant must maintain reasonable health, cleanliness and sanitary standards throughout the rental unit and Section 32(3) states the tenant must repair damage to the rental unit or common areas that is caused by the actions or neglect of the tenant or a person permitted on the property by the tenant.

Residential Tenancy Policy Guideline #1 stipulates a tenant is responsible for periodic cleaning of the carpets to maintain reasonable standards of cleanliness. Generally, at the end of the tenancy the tenant will be held responsible for steam cleaning or shampooing the carpets after a tenancy of one year. Where the tenant has deliberately or carelessly stained the carpet he or she will be held responsible for cleaning the carpet at the end of the tenancy regardless of the length of tenancy.

While I accept the landlord's premise that the tenant is required to clean the carpets in the rental unit on a regular basis during the tenancy, I don't agree that failure to clean the carpet during the tenancy, just for the sake of cleaning the carpet at regular intervals, gives rise to sufficient evidence of a failure to comply with Section 32(3).

Failure to comply with the requirements of Section 32(3) are specifically required if the landlord wants to end the tenancy under Section 47 for failure of the tenant to make repairs to damage to the rental unit within a reasonable time.

The landlord has provided no evidence of the condition of the carpet at the time the Notice was issued. As such, I find the landlord has failed to establish that there was any damage that required repair. As a result, I find the landlord has failed to establish this as a cause to end the tenancy.

### Conclusion

Based on the above, I cancel the 1 Month Notice to End Tenancy for Cause issued by the landlord on July 1, 2016 and order the tenancy to remain in full force and effect.

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: August 22, 2016

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Residential Tenancy Branch