



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes: CNC

### Introduction

The tenant applied under the *Residential Tenancy Act* (the “Act”) to cancel a 1 Month Notice to End Tenancy for Cause dated August 8, 2016 (the “1 Month Notice”).

The tenant and the landlords attended the teleconference hearing. At the start of the hearing I introduced myself and the participants. The parties were provided with the opportunity to submit documentary evidence prior to this hearing, to present affirmed oral testimony evidence and to make submissions to me.

Firstly, while neither party submitted their documentary evidence within the timelines provided under the Rules of Procedure, I am satisfied that both parties had the opportunity to review the evidence based on the testimony provided.

I have reviewed all oral and written evidence before me; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

### Issue to be Decided

- Should the 1 Month Notice to End Tenancy for Cause be cancelled?

### Background and Evidence

A copy of the tenancy agreement was submitted in evidence. A month to month tenancy began on August 1, 2016. Monthly rent in the amount of \$655.00 is due on the first day of each month. The tenant continues to occupy the rental unit.

The tenant confirmed that she was served on August 8, 2016 with the 1 Month Notice alleging three causes. The first cause indicated on the 1 Month Notice is that the tenant or a person permitted on the property by the tenant has significantly interfered with or

unreasonably disturbed another occupant or the landlord. There are two other causes listed on the 1 Month Notice. The tenant disputed the 1 Month Notice within the 10 day timeline provided for under section 47 of the *Act*. The effective vacancy date listed on the 1 Month Notice is September 30, 2016.

Regarding the first cause listed, the landlords presented in evidence the original advertising from a popular internet website for rental listings which indicates that the rental unit was advertised as a non-smoking unit which the tenant did not dispute. The landlords also presented in evidence a copy of the tenant's application to rent the rental unit which the tenant confirmed indicated that she was a non-smoker. The tenant testified that she "began smoking again a week after the eviction notice was given" which contradicted her further testimony that indicated that she smoke twice on the move-in day which was August 1, 2016 specifically one cigarette earlier in the day and another cigarette later in the day.

In addition, the landlord presented several letters from other renters in the building complaining of smoke in the non-smoking building since August 1, 2016 including one from a tenant that specifically mentioned the rental unit of the tenant and that the tenant had her rental unit door open due to the smoke alarm going off. The tenant was asked why she had her door open when the smoke alarm was going off and she said it "I was boiling water and it set of the smoke alarm because of the heat." When the tenant was then asked why the door to her rental unit was open if she was boiling water, the tenant responded "I don't know".

In one compliant letter presented, a renter claims the tenant was seen smoking on the front steps of the rental building which the tenant disputed by stating "No, I was smoking outside of the property while waiting for a cab."

The tenancy agreement section 43 clearly indicates that no smoking of any combustible material is permitted on the residential property or within the rental unit. The tenant signed the tenancy agreement and was provided a warning letter from the landlords dated August 2, 2016 for smoking in the rental unit or on the property on August 1, 2016. A copy of the warning letter was submitted in evidence.

### Analysis

Based on the documentary evidence and the testimony provided during the hearing, and on the balance of probabilities, I find the following.

**1 Month Notice to End Tenancy for Cause** – Firstly, I don't find the tenant to be credible. I have reached this finding for several reasons. Firstly, the tenant's testimony was inconsistent and unreasonable. Secondly, the tenant claims she was not a smoker on her application to rent and admitted to smoking twice on moving day and then began smoking a week after receiving the eviction notice. Thirdly, the tenant laughed after she was advised that I was satisfied the 1 Month Notice was valid and that the tenancy would be ending. Fourthly, when the tenant was asked what she found to be funny about being evicted the tenant stated under oath "you can't get blood out of a stone" and then disconnected from the hearing.

Based on the above and on the balance of probabilities, I find that the landlords have met the burden of proof by proving that the tenant or a person permitted on the property by the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord. Therefore, I find the landlords' 1 Month Notice is valid. I **dismiss** the tenant's application to cancel the 1 Month Notice and **uphold** the landlords' 1 Month Notice. Section 55 of the *Act* applies and states:

**Order of possession for the landlord**

**55** (1) If a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, **the director must grant to the landlord an order of possession of the rental unit if**

(a) **the landlord's notice to end tenancy complies with section 52 [*form and content of notice to end tenancy*], and**

(b) **the director, during the dispute resolution proceeding, dismisses the tenant's application or upholds the landlord's notice.**

[my emphasis added]

Given the above and taking into account that I have reviewed the 1 Month Notice which I find complies with section 52 of the *Act*, I **grant** the landlords an order of possession effective **two (2) days** after service on the tenant. This order may be filed in the Supreme Court and enforced as an order of that court.

As a result, I do not find it necessary to consider the other two grounds listed on the 1 Month Notice. The tenancy ended on **September 30, 2016.**

Conclusion

I dismiss the tenant's application to cancel the 1 Month Notice. I uphold the 1 Month Notice issued by the landlords.

The landlords have been granted an order of possession effective two (2) days after service on the tenant. This order must be served on the tenant and may be enforced in the Supreme Court of British Columbia.

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: October 7, 2016

---

Residential Tenancy Branch

