



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPC, FF; CNC

### Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the "Act") for:

- an order of possession for cause pursuant to section 55; and
- authorization to recover the filing fee for this application from the tenant pursuant to section 72.

This hearing also addressed the tenant's cross application for:

- cancellation of the landlord's 1 Month Notice to End Tenancy for Cause (the "1 Month Notice") pursuant to section 47.

The tenant and landlord HG (the "landlord") attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. The landlord confirmed he was an agent of the landlord's company named in this application, and had authority to speak on its behalf.

At the outset of the hearing, each party confirmed that they had received the other party's evidence. As neither party raised any issues regarding service of the application or the evidence, I find that both parties were duly served with these documents in accordance with sections 88 and 89 of the *Act*.

### Issue(s) to be Decided

Should the landlord's 1 Month Notice be cancelled? If not, is the landlord entitled to an order of possession?

Is the landlord authorized to recover the filing fee for this application from the tenant?

### Background and Evidence

The rental unit is located in the lower portion of a two story home. As per the testimony of the parties, the original tenancy began in March 2012. As per the submitted tenancy agreement and testimony of the parties, the tenancy was most recently renewed

September 1, 2015 on a month to month basis. Rent in the amount of \$1,000.00 is payable on the first of each month. The tenant remitted a security deposit in the amount of \$500.00 at the start of the original tenancy. The tenant continues to reside in the rental unit.

The tenant acknowledged receipt of the landlord's 1 Month Notice dated February 26, 2017 with an effective date of March 31, 2017. The tenant confirmed she received the 1 Month Notice on February 27, 2017 by way of positing to her door. The grounds to end the tenancy cited in that 1 Month Notice were;

- the tenant or a person permitted on the property by the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord
- the tenant or a person permitted on the property by the tenant has seriously jeopardized the health or safety or lawful right of another occupant or the landlord
- 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

#### *Landlord*

The landlord testified that because he has received a number of complaints from the upstairs tenants in regard to noise as well as second hand smoke from the tenant, and because the tenant obtained a dog without permission, he seeks to end the tenancy. It is the landlord's position that the noise and smoke has interfered with the quiet enjoyment of the upstairs tenants. The landlord also testified that the dog, a Rottweiler mix is dangerous and can pose a threat to others. In an effort to support his position the landlord has provided a copy of a warning letter dated February 8, 2017, text messages, a complaint email written by the upstairs tenants dated February 7, 2017 and photographs.

#### *Tenant*

The tenant testified that the home is shared and although the upstairs tenants may hear her noise, she equally hears theirs. The tenant reports that she typically smokes outside however on rain or snow days she smokes just inside the door with the door open. She testified that her current tenancy agreement does not prohibit smoking. The tenant contends that she had a pet at the start of the original tenancy and the landlord, the agent's father, verbally allowed pets at this time. She states there are no restrictions in her current tenancy agreement surrounding pets. The tenant submitted a

copy of her tenancy agreement, a letter written to the landlord dated February 10, 2017 and various excerpts from the Residential Tenancy Branch website.

### Analysis

The onus is on the landlord to prove the reasons listed on the 1 Month Notice took place by the tenant or person permitted on the property by the tenant.

1. The tenant or a person permitted on the property by the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord.

Although the landlord has provided testimony and documentary evidence in the form of an email complaint indicating the tenant was noisy, I find the landlord has provided insufficient evidence to establish any noise created by the tenant warrants the end of tenancy. Upon review of the documentary evidence it becomes clear that the landlord issued only one warning letter in regards to noise, dated February 8, 2017. In the absence of specific dates of noise in the complaint email written by the upstairs tenants and the documentation of only one landlord warning, I find the landlord has failed to establish a repeated pattern of noise that would constitute a significant or unreasonable disturbance.

The tenant entered into a tenancy agreement that did not prohibit smoking and the landlord is now trying to restrict smoking based on one written complaint from the upstairs tenants. In the absence of a smoking prohibition clause in the tenancy agreement, I find the landlord cannot restrict smoking or rely on the ground that it significantly interfered or unreasonably disturbed the upstairs tenants. The landlord had an obligation to disclose to the upstairs tenants that smoking was permitted downstairs and that any second hand smoke was a potential risk.

2. the tenant or a person permitted on the property by the tenant has seriously jeopardized the health or safety or lawful right of another occupant or the landlord

The landlord has provided insufficient evidence to establish the tenant's dog has seriously jeopardized the health or safety or lawful right of another occupant. It is not enough to say the breed of dog is known to be dangerous; the onus is on the landlord to prove the dog itself is a threat. In the absence of substantiating evidence, I find the landlord has failed to prove the tenancy should end on this ground.

In regards to the landlord's claim that the tenant obtained a dog without permission, I find that because the tenancy agreement does not contain a clause restricting pets, the tenant is at liberty to obtain a pet. Therefore the tenant's newly acquired pet cannot form the basis of a notice to end tenancy.

3. 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

The landlord has failed to establish the tenant has engaged in illegal activity, a serious violation of federal, provincial or municipal law. Therefore I dismiss the landlord's application to end the tenancy on this ground.

Overall, I find the landlord has failed to meet his burden in proving the reasons behind the notice. Consequently, the tenant's application to cancel the 1 Month Notice is upheld.

As the landlord was not successful in this application, I find the landlord is not entitled to recover the \$100.00 filing fee paid for the application.

### Conclusion

The landlord's entire application is dismissed without leave to reapply.

The tenant's application to cancel the 1 Month Notice is upheld. The tenancy continues until it is ended in accordance with the *Act*.

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 06, 2017

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Residential Tenancy Branch