



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNC, FF

### Introduction

On April 6, 2017, the Tenant submitted an Application for Dispute Resolution asking that a 1 Month Notice to End Tenancy for Cause dated April 4, 2017, (“the 1 Month Notice”) be cancelled, and to recover the filing fee for the Application.

The Landlord and Tenant appeared at the hearing. The Tenant was assisted by his brother, Mr. D.C. The hearing process was explained and the participants were asked if they had any questions. Both parties provided affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and make submissions to me.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

### Issue to be Decided

- Does the Landlord have cause to end the tenancy?

### Background and Evidence

Both parties testified that the tenancy commenced in March 2000, and is a month to month tenancy. Rent in the amount of \$537.00 is due on the first day of each month. The tenant paid a security deposit of \$212.50 to the Landlord.

The rental unit is an apartment within a multi-unit apartment building containing 357 rental units.

The Landlord Ms. J.T. submitted that the Landlord wants to end the tenancy and is seeking an order of possession due to a careless smoking fire caused by the Tenant on April 2, 2017.

The Landlord served a 1 Month Notice To End Tenancy For Cause to the Tenant on April 4, 2017.

The Landlord selected the following reason for ending the tenancy in the 1 Month Notice:

*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*
- *Put the Landlord's property at significant risk*

In the 1 Month Notice, the details of the cause are as follows:

*On April 2, 2017, there was a fire on the balcony of this unit. John was unaware of it until the on duty person and the fire department made him aware of it. This was caused by careless disposal of smoking materials and caused the fire department to attend to it. Building policy has a zero tolerance to carelessness causing fire.*

The Landlord submitted that on April 2, 2017, the building manager received a call from an occupant who reported a fire on the Tenant's balcony.

The Landlord submitted that the fire department was called and attended to put out the fire.

The Landlord submitted that the fire was caused by the Tenant throwing cigarette butts into a plastic bin located on the balcony. The Landlord submitted that it was a fire caused by careless smoking and the Landlord is concerned with the safety of all the other occupants. The Landlord submitted that a manager attended the Tenants unit, and the Tenant was unaware of the fire on his balcony.

The Landlord submitted that there is a zero tolerance for these incidents because the property is still recovering from a careless smoking fire that occurred three years prior.

The Landlord provided a copy of an Incident / Activity report written by the Landlord Mr. T.V. that indicates the Tenant told him that a heater (ashes) from a cigarette was

knocked off and must have went in the bin. The report also states that based on a statement from another occupant, it sounds like he dumped an ash tray in it. The author of the report indicates by the look of the photos; I agree with the other occupant's statement that an ashtray was dumped in the bin with smoldering butts in it. The report states that the resident told him it was an accident.

The Landlord provided a written statement from a manger A.C. dated April 2, 2017, that indicates she observed smoke and a small flame on the Tenants balcony. The statement indicates she went to the Tenant's unit and banged on the door. The statement indicates the Tenant had a bucket with kitchen scraps on his balcony, which he was also putting cigarettes into, and it ignited. The report indicates the fire department put the fire out with hoses from below.

The Landlord provided photographs of the Tenant's balcony showing the bin that caught fire and showing damage caused to the balcony by the fire.

The Landlord also submitted that the Tenant has received numerous warnings from the Landlord about the poor condition and cleanliness of the Tenant's unit. The Landlord provided copies of six notices issued to the Tenant over a four year period of time regarding the condition of the rental unit being a potential health/ fire hazard.

The Landlord provided a copy of the most recent letter sent to the Tenant dated March 10, 2017. The letter indicates that during a recent inspection of the apartment, it was determined by staff that the condition and cleanliness of the apartment possesses a potential health/ fire hazard to him and his neighbours. The letter has a notation that the Tenant cleaned up; some items still on the floor, asked him March 24, 2017 to keep working on it.

The Landlord testified that there was quite a bit of clutter on the Tenant's balcony.

The Landlord submitted that starting a fire is a material breach of the tenancy.

In response to the Landlord's testimony, the Tenant's brother submitted that his brother has lived in the unit for 17 years. He acknowledged that his brother has issues with cleaning. He submitted that after the fire, he disposed of a lot of his brother's possessions and purchased cleaning supplies. He submitted that they are going to make the unit extra clean and invite the Landlord in for an inspection. He submitted that his brother wants to stay and does not present a risk to the property.

With respect to the fire, The Tenant's brother submitted that his brother was smoking a cigarette, and somehow one of the embers must have gotten out and onto newspapers that were on the balcony. He submitted that his brother had newspapers between a bucket and the building, and the newspapers caught fire and melted the bucket. He submits it was a freak accident.

The Tenant testified that he was standing inside the unit by the patio door having a cigarette, with the patio door open half a foot. He testified it was windy and an ember from the cigarette blew off and went outside onto the balcony and into the newspaper. He testified that bucket was in the corner of the balcony.

The Tenant testified that it was a minor fire that was an accident. The Tenant submitted that he wants another chance. The Tenant submitted that if the tenancy must end he would like additional time to move out.

In response to the Tenants submissions, the Landlord submitted that they have been writing to the Tenant about their concerns since 2013, and the Tenant's brother has provided very little help.

The Landlord submitted that the Tenant was carelessly smoking and admitted that he had newspapers and compost on his balcony. The Tenant was recently asked to clean up and did not comply. The Landlord submitted that it was luck that the wind didn't blow the fire in the direction of the door and ignite the curtains.

The Landlord submitted that if the 1 Month Notice to end the tenancy is upheld, the Landlord will agree to give the Tenant an extra two months to find other accommodation.

### Analysis

In the matter before me, the Landlord has the onus of proof to prove that the reason in the Notice is valid. Based on the evidence and testimony before me, I make the following findings:

I find that the Tenant was given six warnings about the state of his unit being a potential health or fire hazard since March 2013.

I find the Tenant's explanation for the cause of the fire to be odd. The Tenant's version is that wind entered into the unit from the door that was slightly open, and carried an ember from his cigarette back outside and into the corner of the balcony. If the Tenant

had observed an ember from his cigarette blow out the door and onto the balcony, the Tenant should have checked the balcony for fire. The Tenant was unaware of the fire until the manager banged on his door.

The Landlord's version of the cause of the fire is that an ashtray with smoldering butts was dumped in the bin. I find that this version is more likely than not.

Regardless of how the fire started, I find that on April 2, 2017, the Tenant caused a fire due to careless smoking. The fire was fed, or partially fed, by newspapers that the Tenant placed on the deck. The Tenant was warned on many occasions about clutter in his unit presenting a fire hazard.

I find that the Tenant's failure to adhere to the fire hazard warnings and due to his careless smoking, he seriously jeopardized the health or safety or lawful right of another occupant and put the Landlord's property at significant risk.

The Tenant's application to cancel the 1 Month Notice is dismissed. The tenancy is ending.

Under section 55 of the Act, when a Tenant's application to cancel a Notice to end tenancy is dismissed and I am satisfied that the Notice to end tenancy complies with the requirements under section 52 regarding form and content, I must grant the Landlord an order of possession.

I find that the 1 Month Notice complies with the requirements of form and content. The Landlord is entitled to an order of possession on the effective date within the 1 Month Notice; however, the Landlord agreed to give the Tenant an additional two months to find other accommodation.

The Landlord is granted an order of possession effective no later than 1:00 pm on July 31, 2017, after service on the Tenant. This order may be filed in the Supreme Court and enforced as an order of that Court.

### Conclusion

The Tenant's application to cancel the 1 Month Notice To End Tenancy For Cause dated April 4, 2017, is dismissed.

The Landlord is granted an order of possession effective no later than 1:00 pm on July 31, 2017, after service on the Tenant.

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: May 23, 2017

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Residential Tenancy Branch