



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute codes      CNC

### Introduction

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

- cancellation of a 1 Month Notice to End Tenancy For Cause, pursuant to section 47

The hearing was conducted by conference call. All named parties attended the hearing and were given a full opportunity to provide sworn testimony, to present evidence and to make submissions.

The tenant's application was filed within the time period required under the Act.

### Issues

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

### Background and Evidence

The tenancy began on July 17, 2015 with a monthly rent of \$695.00 payable on the 1<sup>st</sup> day of each month. A written tenancy agreement was entered into on July 6, 2015. The tenancy agreement does not contain any provisions or restrictions with respect to smoking inside the rental unit.

The landlord served the tenant with the 1 Month Notice on April 12, 2017 citing the following reasons in the Notice:

- the tenant significantly interfered with or unreasonably disturbed another occupant or the landlord, and
- the tenant seriously jeopardized the health or safety or lawful right of another occupant or the landlord.

- the tenant put the landlord's property at significant risk
- breach of a material term that was not corrected within a reasonable time after written notice to do so.

The landlord's agent testified and provided evidence as follows:

- Warning letters were issued to the tenant to cease smoking inside the rental unit and she was put on notice that it may result in a Notice to End Tenancy.
- Various doctors' notes indicating the landlord has developed a very bad chronic cough.
- The tenant is in breach of the landlord's quiet enjoyment of the property by continuing to smoke excessively inside the rental unit.

The tenant testified as follows:

- The landlord has not presented any evidence to support that health issues are a result of second hand smoke.
- There is no term in the tenancy agreement restricting smoking in the rental unit.
- She has been smoking inside the rental unit since the beginning of the tenancy and the landlord is only now raising it as a concern.
- She would likely not have entered into the tenancy if smoking was prohibited.
- There is no covered area for her to smoke outside.

### Analysis

Section 47 of the Act contains provisions by which a landlord may end a tenancy for cause by giving notice to end tenancy. Pursuant to section 47(4) of the Act, a tenant may dispute a 1 Month Notice by making an application for dispute resolution within ten days after the date the tenant received the notice. If the tenant makes such an application, the onus shifts to the landlord to justify, on a balance of probabilities, the reasons set out in the 1 Month Notice.

Pursuant to section 14 of the Act, a tenancy agreement may be amended to add, remove or change a term, other than a standards term, only if the landlord and tenant agree to the amendment.

I find the tenancy agreement contains no provisions or restrictions with respect to smoking inside the rental unit. The landlord cannot now add a term requiring that smoking is not permitted inside the rental unit without the agreement of the tenant.

As smoking was not a term of the tenancy agreement, I find the tenant is not in breach of a material term of the tenancy agreement. The landlord's agent argued that the tenant is in breach of the landlord's right to quiet enjoyment under section 28 of the Act. However, section 28 of the Act is a provision which protects the tenant's right to quiet enjoyment of the rental property.

Further, I dismiss the landlord's Notice on the grounds that the tenant significantly interfered with, unreasonably disturbed or seriously jeopardized the health or safety of the landlord or another occupant or put the landlord's property at significant risk. The landlord has provided insufficient evidence to support the allegation that the landlords' health concerns are the result of second hand smoke. The landlord provided insufficient evidence of the allegation that the smoke has put the landlord's property at significant risk.

I find that the landlord failed to prove that she had sufficient grounds to issue the 1 Month Notice.

### Conclusion

I allow the tenant's application to cancel the landlord's 1 Month Notice, dated April 12, 2017, which is hereby cancelled and of no force or effect. This 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: May 24, 2017

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Residential Tenancy Branch