



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNC

### Introduction

On May 31, 2017, the tenant's application for dispute resolution to cancel a One Month Notice to End Tenancy for Cause was granted.

On June 2, 2017, the landlord made an application for review consideration, which was granted on the basis that they have new and relevant evidence that was not available at the time of the hearing.

The new evidence was a decision made on January 19, 2017, and corrected by the Arbitrator on May 17, 2017.

Based on this new evidence the Arbitrator ordered the parties to participate in a new hearing, and the original decision was suspended. The Arbitrator at the new hearing may confirm, vary, or set aside the original decision.

This new hearing dealt with an Application for Dispute Resolution by the tenant to cancel a One Month Notice to End Tenancy for Cause, issued on April 10, 2017, (the "Notice").

Both parties appeared, gave affirmed testimony, and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions at the hearing.

### Preliminary issue

The tenant indicated that they were not served within three days after the review consideration was made. The tenant indicated they have not had sufficient time.

In this case, this is a rehearing of the tenant's application. Evidence from the original hearing is for me to consider. I find it not prejudicial to the tenant to proceed with the hearing.

In a case where a tenant has applied to cancel a notice for cause Residential Tenancy Branch Rules of Procedure require the landlord to provide their evidence submission first, as the landlord has the burden of proving cause sufficient to terminate the tenancy for the reasons given on the Notice.

### Issue to be Decided

Should the Notice be cancelled?

### Background and Evidence

On December 12, 2016, the tenant was served with a One Month Notice to End Tenancy for Cause. The tenant disputed the notice and a hearing was scheduled for January 17, 2017.

At the hearing on January 17 2017, the parties agreed the tenancy would continue, the Arbitrator noted in the corrected decision that this was contingent upon the tenant's requirement not to smoke inside the rental unit. The tenant withdrew their application.

At today's new hearing the tenant indicated that they only meant they would try to stop smoking. The tenant stated in any event they are not smoking in the rental unit.

The landlord stated that they would be agreeable to have the tenancy continue if a formal order was made directing the tenant not to smoke inside the rental unit, to bring their agreement in for force.

### Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

In this case, I accept the landlord's evidence that there was an agreement that the tenant would not smoke inside the rental unit. This is supported by the corrected

decision of the Arbitrator issued on May 17, 2017. The file number has been noted on the covering page of this decision.

As this is the second notice to end tenancy and the landlord is willing to continue the tenancy if a formal order is made and the tenant indicated at this hearing that they are not smoking in the rental unit and they have no issue with an order being made.

I find the following order is appropriate,

**I order the tenant not to smoke inside their rental unit.** This order is effective immediately. I informed the tenant at the hearing that this decision constitutes written notice and any further breaches the landlord is at liberty to issue a new notice to end tenancy for failing to comply with a director's order. I find this is now a material term of the tenancy.

#### Conclusion

The original decision and order made on May 31, 2017, is set aside, and replaced with this decision.

The tenant is ordered to comply with the above order. The tenant's application to set aside the One Month Notice to End Tenancy for Cause is granted. The tenancy will continue.

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 09, 2017

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Residential Tenancy Branch