



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      CNC, FF

### Introduction

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

- cancellation of the landlord's 1 Month Notice to End Tenancy for Cause (the "1 Month Notice") pursuant to section 47; and
- recovery of the filing fees for this application pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses. The corporate landlord was represented by its agent SC (the "landlord").

As both parties were in attendance I confirmed there were no issues with service. The tenant confirmed receipt of the landlord's 1 Month Notice on or about July 24, 2017. The landlord confirmed receipt of the tenant's application for dispute resolution dated July 27, 2017. Both parties confirmed receipt of the other's evidence package. In accordance with sections 88 and 89 of the Act, I find that the tenant was duly served with the 1 Month Notice and landlord's evidence package, and the landlord was duly served with the tenant's application for dispute resolution and evidence.

### Issue(s) to be Decided

Is the tenant entitled to cancellation of the 1 Month Notice pursuant to section 47? If not, is the landlord entitled to an Order of Possession on the basis of the 1 Month Notice?

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

### Background and Evidence

The parties agreed on the following facts. This periodic tenancy began in 2008. The rental unit is on the 20<sup>th</sup> floor of a 31 floor building. The parties estimate that the

building is several decades old. The current monthly rent is \$1,250.00. The tenancy agreement does not prohibit smoking in the rental unit.

The tenant smokes in his rental unit regularly. The landlord testified that they have received some complaints about the second hand smoke and odors emanating from the tenant's unit. The landlord submitted into written evidence three complaint letters written by neighbors regarding the tenant's smoking. The three letters have been anonymized, redacting the writer's name and address. All three letters use the same form with only one of the four paragraphs varied. The landlord also submitted into written evidence an incident report form completed by an occupant of the rental building stating that the tenant is smoking and the smoke enters the neighbor's unit.

The tenant submitted into written evidence a letter sent to the landlord addressing the complaints. The tenant detailed in the letter and in his submissions the steps he has taken to reduce the effects of his cigarette smoke. The tenant has installed two air purifiers in the rental unit, weather stripping on the entrances, and keeping windows closed. The parties testified that the tenant does not have access to a balcony in his rental unit and thus cannot smoke outside his rental unit. The tenant testified that he limits his smoking to a space in the rental unit away from windows or doors so as to let the smoke escape. The landlord did not dispute the tenant's evidence.

The landlord stated that despite any measures taken by the tenant, other occupants of the rental building have made complaints.

### Analysis

Section 46 of the *Act* provides that upon receipt of a notice to end tenancy for cause, the tenant may, within ten days, dispute the notice by filing an application for dispute resolution with the Residential Tenancy Branch. If the tenant files an application to dispute the notice, the landlord bears the burden to prove, on a balance of probabilities, the grounds for the 1 Month Notice.

The landlord must show on a balance of probabilities, which is to say it is more likely than not, that the tenancy should be ended for the reasons identified in the 1 Month Notice. In the matter at hand the landlord must demonstrate that the tenant or a person permitted on the property by the tenant has significantly interfered with or unreasonably disturbed another occupant.

I find, on a balance of probabilities, that the landlord has not established sufficient cause for ending this tenancy. There is undisputed evidence that the tenant smokes in his rental unit. The tenant provided undisputed testimony regarding the steps he has taken to minimize the effect of his smoking on the other occupants of the rental building. The landlord said that he believes the steps taken by the tenant are reasonable.

I give little weight to the anonymized letters of complaint submitted by the landlord. Without the authors of these letters in attendance at the hearing and without the names of the authors having been supplied by the landlord, there would be a fundamental denial of natural justice if I were to attach significant weight to allegations from unnamed occupants of the rental building. A party is entitled to know the case against them so as to enable them to address the Applicant's allegations. In accordance with the principles of natural justice and directions provided by the Courts of British Columbia, I put little weight on the anonymized letters submitted into written evidence by the landlord.

I do not find sufficient evidence to conclude that the behaviour of the tenant created an unreasonable disturbance of the other residents. I accept the landlord's testimony that they have received complaints from several of the tenant's neighbors. There is undisputed evidence that the tenant smokes inside his rental unit. I accept the testimony of both parties that the rental building's age and construction means that some odors may travel through the building. I find that while the other tenants may note odors and feel some discomfort at times, based on the totality of the evidence I am unable to conclude that the effects of the smoke is of such a magnitude that it would be characterized as an unreasonable disturbance or significant interference.

The burden of proof rests with the landlord to show that the behaviour of the tenant was such that it transcended the ordinary level expected from a reasonable neighbor. Second-hand smoke is an unavoidable reality of living in a community with other people. I find that the landlord has provided insufficient evidence to demonstrate that the level and frequency of any disturbance caused by the tenant is enough to warrant ending the tenancy.

Therefore, I allow the tenant's application to cancel the 1 Month Notice.

As the tenant's application was successful the tenant is entitled to recover the \$100.00 filing fee for this application.

### Conclusion

The tenant's application to cancel the 1 Month Notice is allowed. The Notice is of no continuing force or effect. This tenancy continues until ended in accordance with the *Act*.

As the tenant's application was successful, the tenant is entitled to recovery of the \$100.00 filing fee for the cost of this application. As this tenancy is continuing, I allow the tenant to recover his \$100.00 filing fee by reducing his monthly rent by that amount on his next monthly rental payment to the landlord. In the event that this is not feasible, I issue a monetary Order in the tenant's favour in the amount of \$100.00. The tenant is provided with these Orders in the above terms and the landlord must be served with this Order as soon as possible. Should the landlord fail to comply with these Orders, these Orders may be filed in the Small Claims Division of the Provincial Court and enforced as Orders of that Court.

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: October 11, 2017

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Residential Tenancy Branch