



# 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 an Application for Dispute Resolution by the tenant filed under the Residential Tenancy Act (the “Act”), to cancel One Month Notice to End Tenancy for Cause, (the “Notice”) issued on February 26, 2018.

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.

In a case where a tenant has applied to cancel a Notice, Rule 7.18 of the 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.

I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure. I refer only to the relevant facts and issues in this decision.

### Issues to be Decided

Should the Notice issued be cancelled?

### Background and Evidence

The tenancy began on January 1, 2014. Current rent in the amount of \$880.00 was payable on the first of each month. The tenant paid a security deposit of \$387.90.

On December 31, 2014 the co-tenant K-K was removed from the tenancy.



The parties agreed that the Notice was served on the tenant indicating that the tenant is required to vacate the rental unit on March 31, 2018.

The reason stated in the Notice was that the tenant has:

- Breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.

The landlord's agent testified that the tenant has breached clause 5(g) of the tenancy agreement by smoking in the rental unit.

The landlord's agent testified that at the annual suite inspection in October 2017, they discovered that the tenant was smoking in the rental unit and there was a full ashtray of cigarette butts on the tenant's nightstand.

The landlord's agent testified that the tenant was given a formal warning letter on November 30, 2017 of the breach.

The landlord's agent testified that they gave the tenant a second breach letter on February 13, 2018, as they were still smoking in the rental unit.

The landlord's agent testified that they did another suite inspection on February 23, 2018, and it was confirmed that the tenant was still smoking and there was another full ashtray of cigarette butts in the kitchen. The landlord's agent stated that the tenant failed to comply with written notice to stop smoking in the unit and they had no choice but to end the notice to end tenancy on February 26, 2018.

The tenant's agent testified that the tenant was grandfathered to be allowed to smoke in the rental unit. The tenant's agent stated that they did not sign the tenancy agreement and that the signatures are fraudulent.

The tenant's agent testified that they cannot deny that the tenant has been smoking in the rental unit; however, they have been trying to smoke elsewhere.

The landlord's agent responded that they are shocked that the tenant would indicate the tenancy agreement was fraudulent.



### Analysis

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

How to end a tenancy is defined in Part 4 of the Act. Section 47(1) of the Act a landlord may end a tenancy by giving notice to end the tenancy.

I have considered all of the written and oral submissions submitted at this hearing, I find that the landlord has provided sufficient evidence to show that the tenant has:

- Breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.

I do not accept the evidence of the tenant's agent that they were grandfathered to be allowed to smoke in the rental unit.

I do not accept the evidence of the tenant's agent that the landlord has falsified the tenancy agreement. The signature of the co-tenant K-K on the tenancy agreement, is extremely similar to the signature of K-K that was written on a cheque issued for February 2018 rent, which the tenant's acknowledged in their evidence that it was not accepted by the landlord.

Further, the handwriting of the tenant DS, that is written across documents filed in evidence is very similar to the style of writing of the tenant on the tenancy agreement.

I accept the tenancy agreement has a no smoking clause. I find the tenant was provided with sufficient warnings on November 30, 2017 and February 13, 2018, by the landlord to correct this behaviour.

The tenant's agent does not deny that the tenant has continued to smoke in the rental unit.

I find the Notice issued on February 26, 2018, has been proven by the landlord and is valid and enforceable. Therefore, I dismiss the tenant's application to cancel the Notice. The tenancy will end in accordance with the Act.

As the landlord has accepted occupancy rent for the month of May 2018, I find it appropriate to extend the effective vacancy date in the Notice to May 31, 2018,



pursuant to section 66 of the Act. Therefore, I find the landlord is entitled to an order of possession effective on the above extended vacancy date.

Since I have dismissed the tenant's application, I find that the landlord is entitled to an order of possession effective **May 31, 2018, at 1:00 P.M.** This order must be served on the tenants and may be filed in the Supreme Court. The **tenant is cautioned** that costs of such enforcement are recoverable from the tenant.

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#### Conclusion

The tenant's application to cancel the Notice, issued on February 26, 2018 is dismissed.

The landlord is granted an order of possession.

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 18, 2018

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Residential Tenancy Branch