



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes: CNC OPC FFT

### **Introduction**

Both parties attended the hearing and gave sworn or affirmed testimony. The One Month Notice to End Tenancy is dated July 31, 2018 to be effective September 30, 2018 and the tenant confirmed it was served .by posting it on the door; she got it August 3, 2018. The tenant /applicant gave evidence that they served the Application for Dispute Resolution dated August 4, 2018 by putting it in the landlord's mailbox and the landlord agreed they received it. I find the documents were sufficiently served for the purposes of this hearing pursuant to section 71(2) (c). The tenant applies pursuant to the *Residential Tenancy Act* (the Act) for orders as follows:

- a) To cancel a notice to end tenancy for cause pursuant to section 47; and
- b) To recover the filing fees for this application.

### **Issue(s) to be Decided:**

Has the landlord proved on the balance of probabilities that there is sufficient cause to end the tenancy or is the tenant entitled to any relief? Is the landlord entitled to an Order of Possession if the tenant is unsuccessful in the application?

### **Background and Evidence**

Both parties attended the hearing and were given opportunity to be heard, to provide evidence and to make submissions. The undisputed evidence is that the tenancy commenced April 1, 2017 on a month to month tenancy, rent is \$900 a month and a security deposit of \$450 was paid April 1, 2017.

Where the tenant has applied to cancel a Notice, Rule 11.1 of the Residential Tenancy Rules of Procedure require the landlord to provide their evidence first as the landlord has the burden of proving sufficient cause to end the tenancy for the reasons given on the Notice.

The landlord served a Notice to End Tenancy for the following reasons:

a) The tenant has seriously jeopardized the health or safety or lawful right of another occupant or the landlord.

The landlord said the tenant is smoking inside the home which is causing his family distress and jeopardizing their health and safety. They live upstairs. A lease is in evidence. It is typewritten and signed by the tenant but there are two clauses in handwriting noting there is to be no smoking and there is no washer and dryer.

The landlord said the tenant's son had rented the unit for his mother who was coming home from hospital and would need to do rehabilitation. They reduced the rent from \$1000 month to \$900 a month. Then the mother needed a rental contract for a program so they signed this document for that purpose. He did not think of it as a lease. He said the sole cause for ending the tenancy is the smoking issue.

The tenant said she did not smoke when she got out of hospital but started smoking again when she had severe pain. She said the landlord added the handwritten clauses to the tenancy agreement after she had signed it and she never initialed the changes or agreed to them. She said she never smokes inside the home but does outside. She often walks her dog and smokes. She provided a letter in evidence from a friend who visits frequently. The friend states the tenant does not smoke inside and did not in her previous home either. On June 30, 2018, the wife of the landlord put a Notice of Rent increase of \$100 on the tenant's door. The tenant told her that was illegal as the rental increases were limited to 4% this year and tenants were to be given 3 months Notice of an increase. The wife of the landlord was unhappy and said that maybe she would have her daughter move in, threatened to cut off the tenant's hot water and then served this Notice to End Tenancy on August 3, 2018. The tenant requests the Notice to End Tenancy be cancelled as the landlord did not have the smoking term in the contract she signed and furthermore, she does not smoke inside and the landlord has not proven she does.

On the basis of the documentary and solemnly sworn evidence presented for the hearing, a decision has been reached.

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**Analysis:**

As discussed with the parties in the hearing, the onus is on the landlord to prove on a balance of probabilities that they have good cause to evict the tenant.

I find the landlord has provided insufficient evidence that he has good cause to end the tenancy. I find the lease in evidence is typewritten with clauses added in writing and

there is insufficient evidence that the tenant agreed to the clause that required no smoking. It is added in writing and is not initialed by the tenant and she maintains it was not in the agreement she originally signed. Furthermore, I find insufficient evidence that the tenant smokes inside. The letter in evidence states she does not and the tenant states she does not. I also find there is some indication that the Notice to End Tenancy was issued in bad faith when the tenant disputed the illegal rent increase. For these reasons, I set aside and cancel the Notice to End Tenancy dated July 31, 2018. The tenancy is continued.

**Conclusion:**

The Application of the Tenant to set aside the Notice to End Tenancy dated July 31, 2018 is successful. The Notice to End Tenancy dated July 31, 2018 is set aside and cancelled. The tenancy continues until legally ended in accordance with the Act. I find the tenant entitled to recover her filing fee of \$100.

**I HEREBY ORDER that the tenant may recover her filing fee by deducting \$100 off her next month's rent.** .

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: September 25, 2018

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Residential Tenancy Branch