



# 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 tenants' 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.

The tenant, D.V.S. and the landlord's agent, H.D. attended the hearing via conference call and provided testimony. The tenant, G.C. did not attend and was unrepresented. The tenant stated that the landlord was served with the notice of hearing package via Canada Post Registered Mail on May 21, 2019. The landlord confirmed receipt of the package by picking it up on May 23, 2019. The landlord served the tenant with the submitted documentary evidence via Canada Post Registered Mail which was signed in receipt for by the tenant, G.C. on May 28, 2019. Neither party raised any service issues. I accept the undisputed evidence of both parties and find that both parties have been sufficiently served as per section 90 of the Act.

At the outset, the tenant, D.V.S. stated that the co-tenant, G.C. was no longer an occupant in the rental unit. The landlord stated that he was advised of the issues, but that the co-tenant was still a named landlord.

### Issue(s) to be Decided

Are the tenants entitled to an order cancelling the 1 month notice?

### Background and Evidence

While I have turned my mind to all the documentary evidence, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of the applicant's claim and my findings are set out below.

This tenancy began on November 16, 2015 on a fixed term tenancy ending on May 31, 2016 as per the submitted copy of the signed tenancy agreement dated November 16, 2015. The monthly rent began as \$650.00 payable on the 1<sup>st</sup> day of each month and a security deposit of \$325.00 was paid.

Both parties agreed that on April 27, 2019, the landlord served the tenant with the 1 Month Notice dated April 27, 2019 by posting it to the rental unit door. The 1 Month Notice sets out an effective end of tenancy date of May 31, 2019 and that it was being given as:

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

The details of cause state:

See attached page 1, Details of Cause, dated April 27, 2019.

A one page typed letter titled, "Details of Cause" signed and dated by the name landlord on April 27, 2019 states,

*To One Month Notice to End Tenancy for Cause dated April 27, 2019*

*Tenants: Mr. G.C. and Ms. D.V.S.,...*

*On April 8, 2019 a Breach letter was issued to tenants, informing them of the need to forthwith stop smoking in the apartment, otherwise landlord must issue a One Month Termination Notice of Tenancy. A discussion regarding this took place with both tenants in the evening of the same day.*

*Tenants stopped smoking for a while, but restarted to do so in the evening of April 26, 2019, when heavy cigarette smoke came from their apartment into the hallway.*

*At or around 10:05 pm the manager knocked on the door of apartment 104 and which was opened by the tenant Mr. G.C. the manager remained outside the open door, convincing himself of heavy cigarette smoke inside the apartment. A contradictory but civilised discussion took place between the two parties, ending with the manager conveying to the tenant his sincere disappointment and the unfortunate result that a One (1) Month Notice to End Tenancy must now be issued.*

The tenant, D.V.S. stated that her co-tenant, G.C. was smoking in the rental unit and that the warning letter was received from the landlord to stop smoking or a notice to end tenancy would be issued. The tenant, D.V.S. stated that her co-tenant, G.C. did stop smoking, but resumed shortly after.

Analysis

In an application to cancel a 1 Month Notice, the landlord has the onus of proving on a balance of probabilities that at least one of the reasons set out in the notice is met.

In this case, both parties confirmed that the landlord served the tenants with a One Month Notice to End Tenancy issued for Cause dated April 27, 2019 by posting it to the rental unit door on April 27, 2019. The tenant, D.V.S. provided undisputed testimony that smoking had occurred prior to being given a warning to stop, but that her co-tenant eventually continued to smoke in contravention of the landlord's warning and the signed tenancy agreement.

As such, I find that the tenants' application is dismissed and uphold the one month notice dated April 27, 2019. Pursuant to section 55 (1) of the Act, the landlord is granted an order of possession. As the effective date of the notice has now passed, I order that the tenant comply with the order within 2 days upon being served with the order of possession.

### Conclusion

The landlord is granted an order of possession.

This order must be served upon the tenants. Should the tenants fail to comply with the order, the order may be filed in the Supreme Court of British Columbia and enforced as an order 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: June 11, 2019

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Residential Tenancy Branch