



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding Maximum Income Property Management  
Corp and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      OPC, CNC, OLC, FF

### Introduction

This hearing was convened in response to applications by the landlords and the tenant.

The landlords' application is seeking orders as follows:

1. For an order of possession; and
2. To recover the cost of filing the application.

The tenant's application is seeking orders as follows:

1. To cancel a One Month Notice to End Tenancy for Cause, (the "Notice") issued on June 29, 2020;
2. To have the landlord comply with the Act; and
3. To recover the cost of filing the application.

Both parties appeared, 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.

Rule 2.3 of the Residential Tenancy Branch Rules of Procedure authorizes me to dismiss unrelated disputes contained in a single application. In these circumstances the tenant indicated several matters of dispute on the Application for Dispute Resolution, the most urgent of which is the application to set aside the Notice to End Tenancy. I find that not all the claims on this Application for Dispute Resolution are sufficiently related to be determined during these proceedings. I will, therefore, only consider the tenant's request to set aside the Notice to End Tenancy. The balance of the tenant's application is dismissed, with leave to reapply.

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 landlords have 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.

#### Preliminary and procedural matter

The first issue that I must considered is whether the tenant is entitled to dispute the Notice on the merits because if the tenant does not dispute the Notice within the statutory time limit it is conclusively presume that the tenancy has ended.

The landlord's agent testified that the tenant was served with the Notice, which was sent by registered mail and left in the mailbox on July 3, 2020.

The tenant testified that they do not have access to the mailbox as the mail is collected by the landlord, who lives above them. The tenant stated that they were not given the document until the end of July 2020, and made their application on August 5, 2020, which is within the statutory time limit.

In this case, I am not satisfied that the tenant received the Notice prior to the end of July 2020. The tenant did not sign the Canada post document as it appears by the Canada post history that the document was left in the mailbox. The evidence of the tenant was that they do not have access to the mailbox and relies upon the landlord to collect and given them their mail. I find without further evidence from the owner of the mailbox of when the tenant was given their mail, that they have failed to prove the document was served on July 3, 2020.

I accept the evidence of the tenant was that they first received the Notice at the end of July 2020, and made their application for dispute resolution on August 5, 2020, which was within the 10 days statutory time limit. Therefore, I will allow the tenant's application to cancel the Notice to be heard.

The tenant further submits that they have no legal obligation to the party named in the Notice, as they are not their landlord listed in the tenancy agreement. The landlord's agent stated they have been hired by the landlord to act as their property manager and

everyone has been notified. A signed agreement was filed in evidence to show they are the landlord's property agent.

I accept the landlord hired a property management company to act as the landlord's agent. The landlord's agent has the full rights as if they are the landlord, to issue any notices, warning letters or any other documents necessary. The tenant has been notified and the tenant cannot ignore the duly appointed agent for the landlord.

### Issue to be Decided

Should the Notice be cancelled?

### Background and Evidence

The tenancy began on February 1, 2020. Rent in the amount of \$1,200.00 was payable on the first of each month. A security deposit of \$600.00 was paid by the tenant.

The parties agreed that the Notice was served on the tenant indicating that the tenant is required to vacate the rental unit on August 30, 2020.

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

- significantly interfered with or unreasonably disturbed another occupant or the landlord;
- seriously jeopardized the health or safety or lawful right of another occupant or the landlord; and
- 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 tenancy agreement provides a no smoking clause. The agent stated that tenant has been given multiple warning letters about smoking. The agent stated that the landlord has health issues and the second-hand smoke is seriously jeopardizing the landlord's health and the smell is significantly interfering with other occupants and neighbours. Filed in evidence are warning letters and letters.

The letter written by the landlord's doctor, in part reads,

"I am Dr. ... and I have been (landlord name) family physician for over 25 years.  
.. (landlord) tells me that at his home he is exposed to second-hand smoke from

tobacco and marijuana. These symptoms are disabling and significant affect his health, daily activities and quality-of-life”

[Reproduced as written.]

The tenant testified that the tenancy agreement states no smoking. However, it does not specially state marihuana. The tenant stated that they have been allowed to smoke outside the premise.

The tenant submits a text message from the landlord which states,

“whats the other issue, you said you don’t smoke in side, I have to trust you, please sure keep window and door closed so smell won’t go inside”.

[Reproduced as written.]

### Analysis

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

In this case, I am satisfied that the tenancy agreement has a no smoking clause. While I accept it does not specially list every smokable items, I find that is not necessary and would be unreasonable to do so. Smoking is smoking whether it is from tobacco, marihuana, or any other combustible substance.

In this case, I am satisfied that the tenant had received warning letters for smoking, which I have reviewed the warning letter of May 14, 2020; however, I find the landlord may be giving the tenant mixed messages as the text message dated May 15, 2020, if true, is concerned with smoke entering the premise and not the action of smoking outside. I find this is conflicting and I find it would be unfair to the tenant to end the tenancy, when there is some conflicting evidence between the warning letter and text message. Further, I find the letters from the occupant and neighbours do not provide sufficient evidence, as they must provide dates, and times of the incidents. Therefore, I find it appropriate to cancel the Notice and the tenancy will continue.

However, I am satisfied that the tenant’s action of smoking may be causing the landlord health issues due to second hand smoke and may be interfering with other occupants right to live in a smoke free environment. Furthermore, “no smoking” is a term of their tenancy agreement, which I find binding on the parties.

I am satisfied that the tenant has now been put on proper notice that they must strictly comply with the “no smoking” policy of the tenancy agreement. Therefore, I find it appropriate to make the following order pursuant to section 62 of the Act, the tenant was informed at the hearing of this order.

**I Order the tenant or any guest of the tenant**, commencing September 8, 2020, at 10:15 am that they must not smoke any substance in the rental unit or rental property. This is in compliance with their tenancy agreement of “no smoking”. This includes tobacco, marihuana and any other substance that is smokable.

**The tenant is cautioned** should they fail to comply with my order the landlord is entitled to issue a new notice to end tenancy for cause for failure to comply with a director’s order.

### Conclusion

The tenant’s application to cancel the Notice is granted. The landlord’s application for an order of possession is dismissed. Neither party are entitled to recover the cost of the filing fee as both applications had merit.

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 09, 2020

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Residential Tenancy Branch