



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding S.I. PROPERTIES LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC, FFT

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;
- authorization to recover her filing fee for this application from the landlord pursuant to section 72.

Both parties attended the hearing via conference call and provided affirmed testimony.

Both parties were advised that the conference call hearing was scheduled for 60 minutes and pursuant to the Rules of Procedure, Rule 6.11 Recordings Prohibited that recording of this call is prohibited.

Both parties confirmed the tenant served the landlord with the notice of hearing package and the submitted 14 documentary evidence files via Canada Post Registered Mail. The landlord confirmed that no documentary evidence was submitted by the landlord. I accept the undisputed affirmed evidence of both parties and find that both parties have been properly served.

Issue(s) to be Decided

Is the tenant entitled to an order cancelling the 1 month notice?
Is the tenant entitled to recovery of the filing fee?

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.

Both parties confirmed that on April 3, 2021, the landlord served the tenant with the 1 Month Notice dated April 3, 2021. The 1 Month Notice sets out an effective end of tenancy date of May 31, 2021 and that it was being given as:

- the tenant or person permitted on the property by the tenant has:
 - significantly interfered with or unreasonably disturbed another occupant or the landlord.

The details of cause state:

The tenant C.P. has a persistent cough which disturbs the peace and quiet enjoyment of the other tenants in the building. The tenant has been informed numerous times regarding this but she continues to cough at all times of the day, night and early mornings.

[reproduced as written]

The landlord stated that the tenant frequently goes to her balcony at night to smoke and then proceeds to cough. The landlord stated that he has received numerous complaints from other building occupants that the coughing that does occur disturbs their sleep.

The tenant confirmed that she does go out to the balcony to smoke briefly then return to her unit and then sometimes cough.

The landlord stated that he has tried frequently in the past to request that the tenant not go out to the balcony to smoke, to try and smoke in her bathroom with the fan on or go to the designated smoking area on the property. The tenant stated that she was not aware of these requests.

Extensive discussion took place with both parties in an attempt to resolve the issue.

Section 63 of the Residential Tenancy Act provides that the parties may attempt to settle their dispute during a hearing. Pursuant to this provision, discussion between the two parties during the hearing led to a resolution. Specifically, it was agreed as follows:

The landlord agreed to cancel the 1 month notice dated April 3, 2021.

The tenant agreed to withdraw the application for dispute.

The tenant agreed to the following three terms:

The tenant will no longer smoke in the rental unit or the balcony.

The tenant will go to the designated smoking area on the property to smoke.

The tenant agrees to keep her windows closed at night.

The landlord gives notice to the tenant that in the event he receives another noise complaint regarding coughing at night the landlord will issue and serve to the tenant a notice to end tenancy for cause.

Both parties agreed that the above noted particulars comprised a full and final settlement of all aspects of the dispute arising from their applications for dispute resolution.

The parties confirmed at the end of the hearing that this agreement was made on a voluntary basis and that the parties understood the nature of this full and final settlement of this matter.

The tenant was cautioned several times that she is voluntarily agreeing to the terms listed above during the hearing and that she understood and consented to those terms.

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 25, 2021

Residential Tenancy Branch