



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding Seto Investments Inc.  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      CNC, OLC, FFT

### Introduction

Pursuant to section 58 of the Residential Tenancy Act (the Act), I was designated to hear an application regarding the above-noted tenancy. The tenant applied for:

- cancellation of the One Month Notice to End Tenancy for Cause (the Notice), pursuant to section 47;
- an order for the landlord to comply with the Act, the Residential Tenancy Regulation and/or tenancy agreement, pursuant to section 62; and
- an authorization to recover the filing fee for this application, under section 72.

Both parties attended the hearing. The landlord was represented by property manager GR. All were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

At the outset of the hearing the attending parties affirmed they understand it is prohibited to record this hearing.

Per section 95(3) of the Act, the parties may be fined up to \$5,000.00 if they record this hearing: "A person who contravenes or fails to comply with a decision or an order made by the director commits an offence and is liable on conviction to a fine of not more than \$5 000."

As both parties were present service was confirmed. The parties each confirmed receipt of the application and evidence (the materials). Based on the testimonies I find that each party was served with the respective materials in accordance with section 89 of the Act.

### Preliminary Issue - Unrelated Claims

Residential Tenancy Branch Rule of Procedure 2.3 states that claims made in an application for dispute resolution must be related to each other. Arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply.

It is my determination that the priority claim regarding the one month notice to end tenancy for unpaid rent and the continuation of this tenancy is not sufficiently related to any of the tenant's other claims to warrant that they be heard together.

The tenant's other claims are unrelated in that the basis for them rests largely on facts not germane to the question of whether there are facts which establish the grounds for ending this tenancy as set out in the notice. I exercise my discretion to dismiss all of the tenant's claims with leave to reapply except cancellation of the notice to end tenancy which will be decided upon.

### Issues to be Decided

Is the tenant entitled to:

1. Cancellation of the Notice?
2. An authorization to recover the filing fee?
3. If the tenant's application is dismissed, is the landlord entitled to an order of possession?

### Background and Evidence

While I have turned my mind to the evidence of the attending parties, not all details of the submission and arguments are reproduced here. The relevant and important aspects of the tenant's claims and my findings are set out below. I explained rule 7.4 to the attending parties; it is the landlord's obligation to present the evidence to substantiate the Notice.

Both parties agreed the tenancy started on September 01, 2019. Monthly rent is \$1,116.00, due on the first day of the month. At the outset of the tenancy a security deposit of \$550.00 was collected and the landlord holds it in trust. The tenancy agreement was submitted into evidence.

Both parties agreed the landlord served the Notice and the tenant received it in person on February 04, 2022. The tenant submitted this application on February 13, 2022 and continues to occupy the rental unit.

The Notice was submitted into evidence. It is dated February 04, 2022 and the effective date is March 31, 2022.

The reasons to end the tenancy are:

- The tenant or a person permitted on the property by 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.
  - Put the landlord's property at significant risk.
- 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 the cause are:

On January 29, 2022, at approximately 12:30 am, management started receiving complaints from residents in the building that at least 3 people were smoking inside the entrance to our underground parkade and making a disturbance by laughing and speaking in loud voices. Upon investigation it became evident to management that this was the tenant from unit 202, and two of her non resident guests.

This is in direct violation of Paragraphs 6 and 12 of the signed Addendum that forms part of the Residential Tenancy Agreement we have with the contract. When asked about it later, the Tenant denied it was her, saying she wasn't even home at that time, but then when presented photographic evidence the Tenant admitted it was her and apologized for "lying".

[...]

The tenant had previously received 3 written warnings that smoking on our property, when proven, will result in management ending tenancy. The last of the 3 warnings was issued the day before this incident. Her ignoring that warning has given us an uneasy feeling that she will continue to totally disregard our attempts to protect other residents. This late night disturbance was inside the entrance to our underground parkade which violated paragraphs 6 and 21 of the Addendum to the Residential Agreement. Which forms part of our agreed upon lease regarding "quiet time", and "smoking".

When commenting on previous incidents, the tenant denied receiving a written warning but evidence shows she had received it. Another time she stated the rules she had previously signed as agreeing to upon move in, are rules she now considers to be ridiculous and on another occasion despite the seriousness of a written warning she didn't bother reading it, as she thought they were only reminders, so she showed us that she just wasn't going to bother reading anything that had to do with the well being and safety of others. Without reading it, she thought it was only some kind of an unimportant reminder.

Tenant has proven to not take our rules, and written warnings seriously, so we have no reason to believe that she will act any differently in the future. As with previous reminders and warnings, on this most recent occasion, the tenant denied making a

disturbance, denied anyone was smoking while saying she wasn't even home at the time. Later, only after we told her we had photo evidence, she quickly changed her story, admitted it was her guests, and said she was sorry for "lying".

The record shows we can't trust her to abide by the agreed upon rules, and to be honest with us.

[...]

It seems tension started a while back when someone informed me that [tenant]'s boyfriend had a key to our building, when I merely asked her about it, she replied saying she is allowed to give out key, and me asking her about that was ridiculous. She said it is "within her rights to have guests over, show me where in our lease it says I must accompany them to and from the door".

Clause 6 of the tenancy agreement states:

6. NO SMOKING is permitted within the Premises or within the Common Areas of the building. This includes all forms of tobacco, marijuana, electronic cigarettes, and any other inhalants. Any smoking must be done at least 6 meters away from the perimeter of the building.

The landlord affirmed the tenant smoked marijuana on the rental building's parkade on January 29, 2022 with two guests and left cigarette butts on the floor. The tenant also smoked on other dates and the landlord received several verbal complaints from other tenants. The landlord submitted photographs of cigarette butts taken on January 29, 2022.

The parties texted about the January 29, 2022 incident on January 31, 2022:

Landlord: We are investigating complaints from a couple tenants about people making noise in our driveway, and smoking, at approximately 12:30 a.m. Do you know anything?

Tenant: I wasn't home until late but I didn't hear anything.

Landlord: I think a guy has a photo, of 3 women, so we will be investigating this on Monday.

Tenant: I'm sorry I lied and I am sorry for the disturbance last night. As you know, I am normally a very respectful tenant and I can assure you it won't happen again.

Tenant: I do not smoke cigarettes and aside from one isolated incident last night which I accept responsibility for and apologize for I have never once had guests smoke cigarettes on the property or leave cigarette butts outside so those other reports have not been about me. In fact, we were not even smoking cigarettes on the property last night as you suggested and did not leave any butts outside. I do not appreciate the threat of eviction based on 1 lease infraction with no prior warnings and I will not be

voluntarily ending my tenancy here as this is being blown extremely out of proportion. I would be happy to take this up with the RTB and will fight this as long as I need to if it comes to that which I am hoping it does not. I am a respectful tenant, I take care of my unit and the building, I pay my rent and as previously mentioned this is one isolated incident that could be met with a written warning or a fine, but not an eviction. That is completely ridiculous.

The tenant apologized for smoking on the rental building's driveway on January 29, 2022. The tenant stated she did not leave cigarette butts on the floor.

Clause 15 of the tenancy agreement states:

15. Tenant will not provide suite keys to anyone other than residents listed on the Residential Tenancy Agreement without prior permission from the Landlord.

The landlord testified that on September 11, 2020 the tenant provided the rental unit's keys to a person without prior permission from the landlord, as required by clause 15 of the tenancy agreement. The tenant's guest entered the rental building with a screwdriver or "something in his hands". The other tenants were afraid when they saw this person entering the building, as a break in happened in August 2020.

The tenant said that she was at home on September 11, 2020 and she provided the keys to her boyfriend to go outside and return to the building. The tenant's boyfriend did not have a screwdriver or any other equipment. The tenant texted the landlord in September 2020:

That was my boyfriend he just went outside and came back in I was home. It's not a violation of the lease to have guests over and let them go outside and come back in that's a bit ridiculous as I don't have a buzzer.

The landlord affirmed the tenant breached several tenancy agreement rules, such as parking rules on November 06, 2020. The landlord submitted a text message dated November 06, 2020:

Hi, this text below was send to you on June 16 I think, and a few others mentioning that vehicles parked in our visiting area without permission could be towed. Its parking by reservation. Please look at it for future reference. Thanks.  
Notice to all tenants of [rental unit's address]. This is a reminder that parking stalls in rear of building are reserved parking. The only exceptions are stalls 17 and 18, which

are non tenant parking. Tenants wishing to reserve stalls 17 or 18 are requested to reserve them by texting me in advance [...].

They are reserved pending availability on a first call basis, not just hit and miss basis. We feel it works best when tenants know in advance that their guests will have Parking. Any unauthorized cars parked in stalls 17 and 18, or any of the reserved stalls, face possible towing without notice.

The tenant stated she was not aware that a reservation was necessary for guests to park and testified that after she received the message on November 06, 2020 she made reservations for her guests to use the parking stalls.

The landlord submitted a notice sent to all tenants on March 31, 2020: "Please accept this as a formal warning regarding smoking and use of any type of barbecue on the property".

The tenant said she did not receive warnings during her tenancy, only letters sent to all the tenants. The tenant affirmed she is pleasant and polite, and she would like to continue her tenancy.

### Analysis

I accept the undisputed testimony that the landlord served the Notice and the tenant received it on February 04, 2022. I find the tenant disputed the Notice within the time frame of section 47(4) of the Act.

Pursuant to Rule of Procedure 6.6, the landlord has the onus of proof to establish, on a balance of probabilities, that the notice issued to end tenancy is valid. This means that the landlord must prove, more likely than not, that the facts stated on the notice to end tenancy are correct and sufficient cause to end the tenancy.

Section 47(1)(d) and (h) of the Act state:

- (1) A landlord may end a tenancy by giving notice to end the tenancy if one or more of the following applies:
  - (d) the tenant or a person permitted on the residential property by the tenant has
    - (i) significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property,
    - (ii) seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant, or

- (iii) put the landlord's property at significant risk;
- [...]
- (h) The tenant
  - (i) has failed to comply with a material term, and
  - (ii) has not corrected the situation within a reasonable time after the landlord gives written notice to do so;

Based on the undisputed testimony provided by the parties, I find the tenant smoked marijuana on the rental property on January 29, 2022. Based on the landlord's convincing testimony and the photographs, I find the tenant left cigarette butts on the floor on January 29, 2022. I find the tenant breached clause 6 of the tenancy agreement.

I find the landlord's testimony about the tenant smoking on other dates was vague. The landlord did not submit complaints from other tenants. I find the landlord failed to prove, on a balance of probabilities, that the tenant smoked on dates other than January 29, 2022.

The tenant apologized for smoking on the rental property. I find that smoking on the rental property once in a tenancy that started in September 2019 is not a serious enough breach to allow the landlord to end the tenancy under section 47(1)(d) or (h) of the Act.

I warn the tenant that she may be served a new one month notice to end tenancy if she smokes on the rental property again.

I find the tenant's testimony and the text message about the September 11, 2020 incident were convincing and detailed. I find the landlord failed to prove, on a balance of probabilities, that the tenant incurred on sections 47(d) or (h) of the Act by providing her rental unit's keys to her boyfriend. I find that providing the keys to the boyfriend without the prior permission of the landlord one time during a 2 and half year tenancy is not a serious enough action to end the tenancy.

I accept the tenant's convincing testimony that after November 06, 2020 she started making reservations for her guests to use the guests parking. I find the landlord failed to prove, on a balance of probabilities, that the tenant incurred on sections 47(1)(d) or (h) of the Act by allowing her guests to use the guests parking without a reservation on November 06, 2020. I find that not making a parking reservation for the guests one time during a 2 and half year tenancy is not a serious enough action to end the tenancy.

The landlord did not submit into evidence a warning sent to the tenant prior to the Notice. The March 31, 2020 letter is a general warning addressed to all the tenants.

Furthermore, the landlord must act in a timely manner if he has cause to end the tenancy.

Thus, I find the landlord failed to prove, on a balance of probabilities, the grounds of the Notice. Accordingly, the Notice dated February 04, 2022 is cancelled and of no force or effect.

As the tenant is successful with the application, pursuant to section 72 of the Act, I authorize the tenant to recover the \$100.00 filing fee.

### Conclusion

The One Month Notice dated February 04, 2022 is cancelled and of no force or effect. This tenancy will continue in accordance with the Act.

Pursuant to section 72(2)(a), the tenant is authorized to deduct \$100.00 from the next rent payment to recover the filing fee.

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: April 26, 2022

---

Residential Tenancy Branch