



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding ETERNITY ONE MANAGEMENT  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      CNC

### Introduction

This hearing convened to deal with the tenant's application for dispute resolution (application) seeking remedy under the Residential Tenancy Act (Act). The tenant applied on March 9, 2022 for an order cancelling the One Month Notice to End Tenancy for Cause (Notice) issued by the landlord.

The tenant, the landlord, and the landlord's agent attended, the hearing process was explained to the parties, and they were given an opportunity to ask questions about the hearing process. All parties were affirmed.

The parties were informed at the start of the hearing that recording of the dispute resolution hearing is prohibited.

Thereafter the parties were provided the opportunity to present their evidence orally and to refer to relevant documentary evidence submitted prior to the hearing, and make submissions to me.

I have reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch Rules of Procedure (Rules). However, not all details of the parties' respective submissions and or arguments are reproduced here; further, only the evidence specifically referenced by the parties and relevant to the issues and findings in this matter are described in this Decision.

Following is a summary of those submissions and includes only that which is relevant to the matters before me. Words utilizing the singular shall also include the plural and vice versa where the context requires.

*Preliminary Issue – evidence*

The landlord submitted that the tenant did not confirm with them that they could open or view the digital evidence submitted by the tenant. Additionally, the landlord submitted they did not listen to the recording made by the tenant of the visit with the fire department. The landlord submitted that the recording was unauthorized. I have excluded the audio 31 minute recording from consideration, as the tenant failed to properly label this evidence according to the Rules, which require a time code for the key point in each audio recording. I have reviewed and considered the other evidence of the tenant, as the landlord made reference to that evidence in the hearing.

Issue(s) to be Decided

Has the landlord submitted sufficient evidence to support their Notice or should the Notice be cancelled?

Background and Evidence

The tenant submitted that the tenancy began on January 1, 2015 and current monthly rent is \$700. The tenancy began with another landlord and the present landlord purchased the residential property from them.

The residential property is a multi-unit, apartment building.

Pursuant to the Rules, the landlord proceeded first in the hearing and testified in support of issuing the tenant the Notice. The Notice was dated March 7, 2022, was signed by the landlord, was served via personal delivery, and listed an effective end of tenancy of April 30, 2022.

The causes listed on the Notice alleged that the tenant or a person permitted on the property by the tenant seriously interfered with or unreasonable disturbed another occupant or the landlord, seriously jeopardized the health or safety or lawful right of another occupant or the landlord, and put the landlord's property at significant risk.

The landlord submitted they took ownership of the residential property in 2016. The landlord submitted that the residential property is non-smoking, and that each written tenancy agreement reflects that tenants are not allowed to smoke on the property.

As to the reasons for serving the tenant the 1 Month Notice, the landlord said that they have received several complaints about the tenant smoking marijuana inside his rental unit. Although not the only one, the complaints have been primarily from another tenant who is a recovering addict, which causes even more interference. The landlord submitted they have talked to the tenant about using edible cannabis products, but these talks have not resulted in any progress.

The landlord submitted that the tenant has been observed smoking on his balcony and spitting over the railing, which has caused even more complaints. The landlord submitted that the tenant has been observed recently spitting over his balcony.

The landlord submitted that the strong marijuana smell has permeated the hallways and other rental units and they have received a “myriad” of complaints from other tenants.

The landlord submitted that the reason the Notice was served to the tenant was specifically about the smoking. As a secondary reason, there was an issue with fire safety, according to the landlord. At an inspection in January 2022, the local fire department conducted an inspection and had trouble entering the rental unit, due to the tenant’s alleged hoarding.

The landlord said a representative from the fire department said they had tried to contact the tenant about 10 times, with no success. As a result, the representative would not write a report. Filed in evidence by the landlord were photographs of the rental unit.

Additional filed evidence by the landlord included emails and text messages, some between other tenants and the landlords, some from 2019 from the landlord to the tenant about smoking, a written statement, and a letter from the landlord to the tenant, dated April 11, 2020.

#### Tenant’s response –

The tenant submitted that he quit smoking in January 2022 and only uses edibles now. The tenant submitted that there is smoke coming from the neighbouring building, which enters the residential property and has been reported to the landlord. Filed in evidence were photographs showing cigarettes butts and joints from residents on the opposite side of the building, according to the tenant.

The tenant submitted that the tenant below him has been smoking in his rental unit and balcony for 5 ½ years, but that he never complained to the landlord about the second-hand smoke. The secondary smoke caused him to buy an air purifier, so he quit smoking. The doctor diagnosed the tenant with having COPD.

The tenant submitted that he had been coughing up substances from his lungs, as they cleared, but that his lungs are mostly cleared now. The tenant submitted that he does not spit over the side of the balcony and instead, spits into a trash bin. Filed in evidence was a picture of the trash can containing spit.

The tenant submitted that he has never smoked inside the building, only on his balcony prior to January 2022, although he has talked to 6 other tenants who smoke in the building. The tenant submitted that he and the other tenants think the recovering addict seems to run the place.

The tenant submitted that he has had serious run-ins with the tenant, below him, including when the tenant tried to kick in his door and is generally a bully. Filed in evidence is a picture of a cracked door frame. The tenant asserted that the landlord has not done anything about that tenant.

The tenant denied that he was a hoarder, although he at one time did accumulate a lot of items in order to sell them. The tenant said he has gotten rid of a lot of personal property and that there is no clutter now. Filed in evidence by the tenant were photographs of the rental unit.

Additional evidence of the tenant included email communication between the tenant and landlord and a medical marijuana license.

### Analysis

Based on the documentary evidence and the testimony provided during the hearing, and on the balance of probabilities, I find the following.

When a tenant disputes a Notice to end a tenancy on time, which the tenant did in this matter, the onus of proof is on the landlord to prove that the Notice is valid and should be upheld. If the landlord fails to prove the Notice is valid, it will be cancelled. The burden of proof is based on the balance of probabilities, meaning the events as described by one party are more likely than not.

I must consider whether on the day the Notice was issued, the landlord had sufficient cause to end the tenancy.

Where one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof has not met the onus to prove their claim and the claim fails.

The Notice in this dispute was issued under section 47(1)(d)(i)(ii) and (iii) of the Act, which permits a landlord to end a tenancy if that the tenant or a person permitted on the property by the tenant seriously interfered with or unreasonable disturbed another occupant or the landlord, seriously jeopardized the health or safety or lawful right of another occupant or the landlord, or put the landlord's property at significant risk.

Having reviewed the landlord's evidence, I find there was insufficient evidence that the landlords conducted investigations of the other tenants' complaints of the tenant smoking inside the rental unit and spitting over the balcony to determine their validity, which were the main complaints. Additionally, there were no witnesses attending the hearing to provide direct testimony to support the landlord's allegations against the tenant, as most complaints were in text messages from unidentified sources.

I find it is a landlord's obligation to ensure that each of the tenants have quiet enjoyment and without investigating the complaints, I find the landlord is not likely to prevail.

I would have expected the landlord provide their own firsthand evidence in which they could verify that the smoke was coming from the tenant's rental unit, but there was none. The tenant's photographs showed many cigarette butts in the parking lot, which I find shows that it was just as likely as not that cigarette smoke in the residential property came from smokers directly below the rental units, especially when windows are left open for ventilation purposes.

The tenant denied smoking in his rental unit at all and not on his balcony since January 2022. I find the landlord submitted insufficient evidence to rebut this testimony and as noted, the landlord did not provide any direct evidence themselves to support that the tenant did smoke inside the rental unit.

I therefore find the landlord submitted insufficient evidence that the tenant has smoked inside the rental unit leading up to this Notice.

As to the matter of the landlord's claims that the tenant's alleged hoarding caused a fire and safety concern, I give little weight to the landlord's undated photographs of the inside of the rental unit. The evidence suggests these photographs were taken in January 2022, when the fire department attended the residential property.

The tenant also provided photographs inside the rental unit, which I find supports that the tenant has removed many belongings from his rental unit and no longer represented a fire and safety concern. I was not provided evidence that the landlord investigated and/or followed-up with the tenant to ensure the rental unit was compliant with fire and safety obligations prior to issuing the Notice in March 2022 or that they obtained a fire department report.

I therefore find the landlord submitted insufficient evidence to show on the balance of probabilities that the state of the rental unit represented a fire and safety concern on the day the Notice was issued.

For these reasons, I find the landlord submitted insufficient evidence to support their Notice. As a result of the above, I therefore **ORDER** that the 1 Month Notice dated March 7, 2022, is **cancelled**, and has no force or effect. I order the tenancy continues until it may otherwise legally end under the Act.

#### Cautions for the parties –

I caution the tenant that should the allegations relating to smoking in the rental unit, spitting from the balcony, or hoarding is verified by the landlord in the future, this decision may form part of the file in case these matters come before an arbitrator for consideration.

I caution the landlord that it is their responsibility to ensure the rights of quiet enjoyment of all tenants and in this case, I find the tenant's evidence shows damage to his door allegedly from another tenant trying to kick in his door. The landlord's own evidence shows that both the tenants have called the police and that the landlords are unaware of any charges pending. The landlord wrote in their evidence that they suggested the tenant communicate with the police about any concerns with the other tenant.

I do not find it solely the responsibility of the tenants to sort out their differences between each other or with the police, if one tenant attempts to kick in the door of another. I find the landlord is also responsible for intervening or investigating matters related to the

tenancies in the building. Failure to do so may result in the tenant seeking monetary compensation for loss of quiet enjoyment in the future.

### Conclusion

The Notice issued by the landlord is cancelled and is of no force or effect due to insufficient evidence.

The tenancy has been ordered to continue until ended in accordance with the Act.

The parties have been issued cautions.

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*. Pursuant to section 77(3) of the Act, a decision or an order is final and binding, except as otherwise provided in the Act.

Dated: July 4, 2022

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Residential Tenancy Branch