



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding Peninsula Property Management  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      CNC

### Introduction

On June 3, 2022 the Tenant filed an Application for Dispute Resolution, to challenge the One-Month Notice to End the Tenancy for Cause (the “One-Month Notice”). The matter proceeded by way of a hearing pursuant to s. 74(2) of the *Residential Tenancy Act* (the “Act”) on October 14, 2022.

Both parties attended the conference call hearing. I explained the process and both parties had the opportunity to ask questions and present oral testimony during the hearing.

### Issues to be Decided

Is the Tenant entitled to cancellation or withdrawal of the One-Month Notice issued by the Landlord on May 26, 2022?

If they are unsuccessful, is the Landlord entitled to an order of possession pursuant to s. 55 of the *Act*?

### Background and Evidence

The Tenant provided a copy of the one-year tenancy agreement that they signed in April 2021, as a renewal of the tenancy with a previous landlord. This Landlord took over in September 2021. The agreement provided for the rent payment of \$1,100 on the 1<sup>st</sup> of each month. This agreement contains a clause specific to the issue of smoking: “The Tenant hereby agrees that the rental unit is a non-smoking unit.”

The Landlord provided the follow-up agreement they provided as the new Landlord in May 2022. This showed the rent amount of \$1,085. The Landlord in the hearing drew attention to relevant clauses 3.12 providing for “No Vaping or Smoking” of any kind on the residential property.

The Landlord served the One-Month Notice to the Tenant on May 26, 2022 by attaching a copy to the door of the rental unit. The Landlord provided the move-out date of June 30, 2022. On page 2 the Landlord indicated the reasons:

- Tenant or a person permitted on the property by the tenant
  - significantly interfered with or unreasonably disturbed another occupant or the landlord
- 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 section on the second page provides more information:

- 1<sup>st</sup> smoking violation warning – Aug 3, 2021
- 2<sup>nd</sup> smoking violation final warning – May 17, 2022
- May 22<sup>nd</sup>, smoking violation reported

In the hearing, the Landlord described the events listed in the One-Month Notice, as above. This was a letter sent by the previous landlord to the Tenant on August 3, 2021. On May 17, 2022 the Landlord completed a visual inspection in the rental unit that revealed evidence of smoking; on May 24 another building resident reported the Tenant’s smoking to the Landlord here.

The Tenant explained the second listed infraction by claiming that nicotine swabbed from the bathroom ceiling fan was from the same prior incident in August 2021. They reported this to the Landlord directly upon the Landlord’s discovery of that residue on the fan.

Regarding the third listed incident, the Tenant explained it was an upstairs resident who accused their other family member of smoking cannabis within the rental unit. According to the Tenant, this family member smoked across the street from the rental unit property, and in that spot was cautioned by the other building resident, who stated “you better not [smoke in the rental unit].” The Tenant provided that the violation of smoking *in the unit*, as reported to the Landlord, was a “lie”.

The Tenant confirmed they received letters from the Landlord, dated August 3, 2021 and May 17, 2022, as appear in the Landlord’s evidence.

The Landlord responded by explaining that they received an email on the May 22 incident from a party who asked not to be named. This email did not appear in the Landlord's evidence.

The Tenant also raised their concern about the ambient smoke that enters their unit from the neighbouring gas station and coffee shop. In their opinion this raises the possibility that the Landlord relied on the odour, as such, that did not emanate from them smoking in their own rental unit.

### Analysis

The *Act* s. 47 provides various grounds for which a landlord may end a tenancy by issuing a One-Month Notice.

In this matter, the onus is on the Landlord to prove they have cause to end the tenancy. On my review, the Landlord relies on mainly indirect evidence to establish in their mind that the Tenant smoked in the rental unit, against the specific clause in the tenancy agreement.

Regarding the Landlord's find in the Tenant's own bathroom, I find this is inconclusive evidence of smoking in the rental unit and does not show repeated instances of smoking in the rental unit, however implausible it may seem that residue would collect from a single instance of the Tenant's smoking within the rental unit that they admitted to. Minus other evidence, such as ashes or remnants or an ashtray or other smoking gear, I find this inconclusive as evidence of the Tenant smoking within the rental unit.

The Landlord relies on hearsay for the 3<sup>rd</sup> listed infraction. I find there was no direct observation or detection by the Landlord of smoking within the rental unit based on another resident's reporting of that to the Landlord. I find the Landlord did not verify the other resident's accusation, which in all likelihood was ill-founded with a high likelihood of inaccuracy, and possibly based on some enmity between the other resident and the Tenant. Minus verification of that resident's statements, this is not sound evidence with which the Landlord may end the tenancy.

Though the Landlord indicated this was a breach of a material term of the tenancy agreement, I find this is not such a matter. As provided for in the Residential Tenancy Policy Guideline 8 'Unconscionable and Material Terms', which gives a statement of the policy intent of the *Act*, a material term is one which both parties agree is so important that "the most trivial breach of that term gives the other party the right to end the agreement." If the Landlord relied on a

material term like this, then a single infraction could be considered cause to end the tenancy and that did not occur.

Without solid first-hand proof of smoking within the rental unit – such as direct observation of either the act itself, or solid physical evidence – I find the One-Month Notice is not valid. The Landlord has not met the burden of proof; I so order the One-Month Notice cancelled.

I caution the Tenant that they are obligated to ensure that no smoking of any kind occurs within the rental unit. These incidents have clearly alerted the Landlord to the Tenant's (or their family member's) habit, and any further infraction will, in all likelihood, be recorded for future action by the Landlord.

### Conclusion

For the reasons above, I order the One-Month Notice issued on May 26, 2022 is cancelled and the tenancy remains in full force and effect.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under s. 9.1(1) of the *Act*.

Dated: October 18, 2022

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Residential Tenancy Branch