



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding SOUTH DRIVE HOLDINGS  
LTD. and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes    OPC, FFL

### Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- an Order of Possession pursuant to section 55;
- authorization to recover his filing fee for this application from the tenant pursuant to section 72.

At the outset of the hearing, I explained to the parties that as these hearings were teleconferences, the parties could not see each other, so to ensure an efficient, respectful hearing, this would rely on each party taking a turn to have their say. As such, when one party is talking, I asked that the other party not interrupt or respond unless prompted by myself. Furthermore, if a party had an issue with what had been said, they were advised to make a note of it and when it was their turn, they would have an opportunity to address these concerns. The parties were also informed that recording of the hearing was prohibited and they were reminded to refrain from doing so.

All parties acknowledged these terms. As well, all parties in attendance provided a solemn affirmation. All parties acknowledged the evidence submitted and were given an opportunity to be heard, to present sworn testimony, and to make submissions. I explained the hearing and settlement processes to both parties. Both parties had an opportunity to ask questions. Both parties confirmed that they were ready to proceed with the hearing, they did not want to settle this application, and they wanted me to make a decision regarding this application. Neither party made any adjournment or accommodation requests. I have reviewed all oral and written submissions before me; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

### Issue(s) to be Decided

Is the landlord entitled to an order of possession?

Is the landlord entitled to the recovery of the filing fee for this application?

### Background and Evidence

The landlord gave the following testimony. The landlord testified that the tenancy began on February 20, 2020 with the monthly rent of \$700.00 due on the first of each month. The tenant paid a security deposit of \$350.00 which the landlord still holds. On May 25, 2022 the landlord issued a One Month Notice to End Tenancy for Cause for the following reason:

#### ***Landlord's notice: cause***

**47** (1) *A landlord may end a tenancy by giving notice to end the tenancy if one or more of the following applies:*

*(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;*

The landlord testified that there is a strict no smoking policy for this property and that the tenant has a no pet clause. Both items were listed in the tenancy agreement which the tenant agreed to and signed. The landlord testified that he became aware that the tenant had a cat in April 2022 and despite giving the tenant 30 days notice to remove the cat, she didn't. The landlord testified that he received several complaints that the tenant was smoking in her unit in May 2022. The landlord testified that since May 2022 he has received over 20 verbal complaints about the tenant smoking in her unit.

The landlord testified that the tenant was given warning notices about the two infractions but did not correct them within a reasonable time. The landlord testified that on October 6, 2022 he conducted the annual fire inspection and observed a strong smell of cigarette smoke in the tenants unit. The landlord testified that despite the notice and the warnings, she has not corrected her behaviour and requests an order of possession.

The tenant gave the following testimony. The tenant testified that she quit smoking awhile ago and that she never smokes in the unit. The tenant testified that she got rid of the cat in late June 2022. The tenant testified that she would like to stay.

### Analysis

When a landlord issues a notice under section 47 of the Act, they bear the responsibility to provide sufficient evidence to support the issuance of the notice. In the matter before me, the tenant has not filed an application to dispute the notice or submit any

documentary evidence in response to the landlords claim. The landlord gave clear, concise, and compelling evidence. The landlord provided dates of the events, and documentation to support his position.

In addition, the landlord provided firsthand observation and testimony that the tenant had cigarette smoke in her unit in October 2022 even after she had received warning notices and a notice to end tenancy. Based on the above, I find that the landlord has provided sufficient evidence to satisfy me, on a balance of probabilities, that he was justified in issuing the notice.

I find that the notice complies with section 52 of the Act in form and content and that the landlord is entitled to an order of possession pursuant to section 55 of the Act. The tenancy is terminated. The landlord is also entitled to retain \$100.00 from the security deposit for the recovery of the filing fee for this application.

### Conclusion

The landlord is granted an order of possession, the tenancy is terminated.

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: November 21, 2022

---

Residential Tenancy Branch