



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding CENTURY 21 QUEENSWOOD REALTY  
LTD. and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      CNC

### Introduction

This hearing convened as a result of a Tenant's Application for Dispute Resolution, filed on September 29, 2022, wherein the Tenant sought to cancel a 1 Month Notice to End Tenancy for Cause, issued on September 22, 2022 (the "Notice").

The hearing was conducted by teleconference at 9:30 a.m. on November 14, 2022. Both parties called into the hearing and were provided the opportunity to present their evidence orally and in written and documentary form and to make submissions to me. The Tenant was supported by his social worker J.N. and his advocate, T.H. The Landlord was represented by the Property Manager, R.R.

The parties agreed that all evidence that each party provided had been exchanged. No issues with respect to service or delivery of documents or evidence were raised. I have reviewed all oral and written evidence before me that met the requirements of the *Residential Tenancy Branch Rules of Procedure*. 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.

### Issue to be Decided

Should the Notice be cancelled?

## Background and Evidence

*Residential Tenancy Branch Rules of Procedure—Rule 6.6* provides that when a tenant applies to cancel a notice to end tenancy the landlord must present their evidence first as it is the landlord who bears the burden of proving (on a balance of probabilities) the reasons for ending the tenancy. Consequently, even though the Tenant applied for dispute resolution first/and is the Applicant, the Landlord presented their evidence first.

The Property Manager, R.R., testified as follows. He confirmed that he has been the property manager at the rental building since May 2021. R.R. confirmed that this tenancy began March 1, 2018. The Tenant pays \$974.00 in rent.

The Notice was issued on September 22, 2022. The reasons cited on the Notice was that the Tenant was smoking and disturbing neighbours. R.R. confirmed that the Tenant was not served with any supporting documentation, nor any other information which would inform the Tenant as to the reasons the Landlord wished to end the tenancy.

R.R. confirmed that the reasons for issuing the Notice are that the Tenant has been smoking in his rental unit. R.R. stated that he has smelled the smoke coming through the door. R.R. stated that he has sent emails to the Tenant about the smoking.

R.R. stated that the other reason they wish to end the tenancy is that the Tenant has been “disturbing neighbours”. In this respect he said that there have been at least 12 times the police have been called. R.R. described these as police “raids”, which he stated has been very stressful for the neighbours. The dates of these raids are as follows: December 10, 2021, February 9, 2022, February 21, 2022, March 7, 2022, March 25, 2022, March 27, 2022, and April 8, 23, 25, 26, 2022. R.R. stated that he does not have all the details of these raids but they relate to “life or death matters”, enough that his floor had to be evacuated.

R.R. also stated that the Tenant was found intoxicated in common areas a handful of times in the spring of 2022.

R.R. also stated that the Tenant was smoking in his rental unit throughout his tenancy up to and including September 21, 2022. R.R. stated that this final occasion is what prompted the Notice.

R.R. stated that he has not noticed any improvement in the Tenant since issuing the Notice. Although he confirmed he was not aware of the Tenant had smoked since issuing the Notice.

In response to the Landlord's testimony J.N. testified as follows. She confirmed that she has been involved with the Tenant since September 22, 2022 and he has been exceeding their expectations in terms of accessing programs and treatment for his mental health issues and the death of his wife. He comes to counseling. He attends 12 step programs in the community. He attends AA meetings. J.N. also stated that the Tenant is currently residing at a sober living house.

The Tenant also testified. He stated that he moved into the rental unit in 2001. He confirmed that he lived there with his wife who passed away two years ago. The Tenant stated that he was a health care aide, for N.N.D., and had an injury where he ruptured his tendon. He is left with a finger that doesn't work. He stated that when he was informed he plateaued and would not go back to his job he got pretty depressed. He was also a bass player in a band and that was a considerable loss. He stated that his drinking started when his wife passed away, who he was with for 23 years.

The Tenant confirmed that he knew that he was getting so sick from the alcohol that he had to do something. He checked himself into detox on September 15, 2022 and was there for 7 days. The Tenant stated that he was in treatment and was not smoking in his unit as alleged by the Landlord. The Tenant further stated that as of November 15, 2022 he will have been sober for two months and he is a different person.

The Tenant stated that any time the police were involved he was the one who called because he called the crisis line as it was a cry for help. The Tenant stated that he did so for his own safety as he was not well in his head. He confirmed that the only damage he ever did was to himself and his furniture.

The Tenant denied the Landlord's allegations that he smokes in his rental unit. He stated that he smoked in front of the building, not on the balcony. He also stated that there may have been having a cigarette outside but did not smoke in his suite.

T.H. also testified. He confirmed the Tenant moved into the rental unit in 2001, 21 years ago. He also stated that the only damage the Tenant did, he did to himself and his own furniture. He confirmed that the Tenant did not engage in any illegal activity.

## Analysis

Ending a tenancy is a significant request and may only be done in accordance with the *Residential Tenancy Act*. A landlord who seeks to end a tenancy for cause pursuant to section 47 of the *Act* bears the burden of proving the reasons for ending the tenancy.

After consideration of the testimony of the parties and on a balance of probabilities, I find the Tenants' Application should be granted and the Notice should be cancelled.

The reasons cited on the Notice were as follows:

- the Tenant or a person permitted on the residential property by the Tenant has
  - significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property,
  - seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant, or
  - put the landlord's property at significant risk;
- the Tenant has engaged in illegal activity that has caused or is likely to
  - damage to the landlord's property,
  - has adversely affected or is likely to adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant of the residential property, or
  - jeopardize or is likely to jeopardize a lawful right or interest of another occupant or the landlord;

These are serious allegations, and the onus is on the Landlord to prove the tenancy must end for the reasons cited, particularly in a tenancy of such a significant duration.

The reasons cited on the Notice were that the Tenant was smoking and disturbing neighbours. The allegations on the Notice are that this has *seriously jeopardized* the health or safety of another occupant or the landlord and put the landlord's property at *significant risk*. The use of such wording in the legislation is purposeful and reflects the standard of proof required for a landlord to end a tenancy for these reasons.

I find the Landlords have failed to meet the burden of proving this tenancy should end for the reasons cited on the Notice. The Landlords provided insufficient evidence that the Tenant actions have created any risk to anyone except the Tenant himself.

I find the Landlord has submitted insufficient evidence to support a finding that the Tenant smokes in his rental unit. I accept the Tenant's testimony that when he smokes, he does so outside.

The Landlord also alleged the Tenant engaged in illegal activity which has adversely affected or is likely to adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant of the residential property. The Landlord did not provide any details as to any *illegal activity* save and except for the Property Manager's testimony that the police had been called to the rental unit numerous times over the winter of 2021 and spring of 2022.

*Residential Tenancy Branch Policy Guideline 32—Illegal Activities* provides the following guidance:

The term "illegal activity" would include a serious violation of federal, provincial or municipal law, whether or not it is an offense under the Criminal Code. It may include an act prohibited by any statute or bylaw which is serious enough to have a harmful impact on the landlord, the landlord's property, or other occupants of the residential property.

The party alleging the illegal activity has the burden of proving that the activity was illegal. Thus, the party should be prepared to establish the illegality by providing to the arbitrator and to the other party, in accordance with the Rules of Procedure, a legible copy of the relevant statute or bylaw.

The Landlord has failed to provide any evidence to support their claim that the Tenant has engaged in any illegal activity. I therefore find that the Landlords have failed to prove this reason cited on the Notice.

The Tenant admitted that when his wife of 23 years passed away, he sunk into a deep depression which involved excessive drinking. He also admitted that he called the police as he was concerned for his own safety. While the police attendance for wellness checks would be unsettling for other residents, I am not satisfied this justifies ending his tenancy; particularly as the Tenant has taken active steps to address his drinking and mental health issues. I accept the Tenant's testimony as well as that of his social worker and advocate that he has been sober for more than two months and has been working on his addiction and mental health issues in a responsible manner.

Conclusion

**The Tenants' application to cancel the Notice is granted. The tenancy shall continue until ended in accordance with the *Act*.**

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: December 14, 2022

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Residential Tenancy Branch