



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding 0899630  
and [tenant name suppressed to protect privacy]

## **DECISION**

### Introduction

This hearing was convened in response to an application by the Tenant pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

1. An Order cancelling a notice to end tenancy - Section 47’
2. An Order in relation to a disputed rent increase - Section 43;
3. An Order for compliance - Section 62; and
4. An Order to recover the filing fee for this application - Section 72.

The Parties were each given full opportunity under oath to be heard, to present evidence and to make submissions. No issues were raised by either Party in relation to the receipt of each other’s evidence.

### Preliminary Matter

Rule 2.3 of the Residential Tenancy Branch Rules of Procedure provides that claims made in an application must be related to each other and unrelated claims may be dismissed with or without leave to reapply. As the claims in relation to a dispute of a rent increase and in relation to the Landlord’s compliance are not related to the issue of whether the tenancy ends or not, I dismiss these claims with leave to reapply.

### Issue(s) to be Decided

Is the Tenant entitled to a cancellation of the notice to end tenancy?

Is the Tenant entitled to recovery of the filing fee?

### Background and Evidence

The following are agreed facts: the tenancy started on November 1, 2014. Rent of \$1,985.70 is payable on the first day of the month. At the outset of the tenancy the Landlord collected a security deposit of \$787.50. The most recent written tenancy agreement that started November 1, 2020 sets out a larger security deposit in error. The Landlord gave the Tenant a one month notice to end tenancy for cause dated December 8, 2022 (the "Notice"). The reason selected for the Notice is for a breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so. The tenancy agreement provides an addendum and another page indicating that smoking is not allowed in the unit or common areas. The penalty set out for smoking is a fine and/or a cleaning charge.

### Analysis

Section 47(1)(h) of the Act provides that a landlord may end a tenancy by giving notice to end the tenancy if the tenant has failed to comply with a material term, and has not corrected the situation within a reasonable time after the landlord gives written notice to do so. Policy Guideline #8 provides that a material term is a term that the parties both agree is so important that the most trivial breach of that term gives the other party the right to end the agreement. As the tenancy agreement provides for a penalty or cleaning charge should the Tenant smoke in the unit and as there is no provision for ending the tenancy or a statement that the term is material to the continuation of the tenancy, I consider that the term restricting smoking is not a material term of the tenancy agreement. For this reason I find that the Notice is not valid for its stated reason and that the Tenant is entitled to its cancellation. The tenancy continues.

As the Tenant has been successful with their claim I find that the Tenant is entitled to recovery of the **\$100.00** filing fee and the Tenant may deduct this amount from future rents payable in full satisfaction of the claim.

Conclusion

The Notice is cancelled, and the tenancy continues.

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

Dated: April 20, 2023

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Residential Tenancy Branch