



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing

A matter regarding Cascadia Apartment Rentals Ltd.  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      OLC, FFT

### Introduction

The Tenant filed an Application for Dispute Resolution on January 27, 2023 seeking the Landlord's compliance with the legislation and/or the tenancy agreement. Additionally, they seek reimbursement of the Application filing fee. The matter proceeded by way of a hearing pursuant to s. 74(2) of the *Residential Tenancy Act* (the "*Act*") on May 19, 2023.

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. Both parties confirmed they neither prepared nor submitted documents as evidence for this hearing.

### Issue(s) to be Decided

Is the Landlord bound to comply with the *Act* and/or tenancy agreement, pursuant to s. 62 of the *Act*?

Is the Tenant entitled to reimbursement of the Application filing fee, pursuant to s. 72 of the *Act*?

### Background and Evidence

In the hearing, both parties confirmed that the tenancy agreement started in March 2022, with the current amount of rent at \$1,800.

The Landlord presented that the agreement includes a special addendum known as the "smoke-free addendum". This sets out that the rental unit property is 100% smoke-free, with no areas allowing smoking. The simple answer to the Tenant's query on where to go if smoking is: "off property".

In the hearing the Tenant presented that they were accused of smoking, and they had never smoked in common areas. There was a previous strata council meeting that resulted in a warning, and the Tenant had pledged to abide by the rules from that point forward. They received a subsequent fine in

December – this was initially a \$200 fine which then “turned into \$100.” They paraphrased their Landlord’s words to them: if they get one more complaint about the Tenant smoking, they will receive an end-of-tenancy notice from the Landlord.

The Tenant reiterated their concern that they are concerning about being accused of smoking – to the degree that they are being “spied on” – and then evicted for that reason, even when someone else was smoking in reality.

In the hearing, the Landlord presented that, as a result of strata intervention, the Landlord had to put the Tenant on warning. They previously served the Tenant a 30-Day notice to end tenancy in January 2023 to the Tenant for this reason. They stated their attention to the building rules and strata bylaws does not constitute “harassment”, and they are not actively seeking out evidence. At the same time, they do gather evidence where any tenant violates the rules of the building or strata bylaws, in order to prove their case if required.

### Analysis

In the hearing I informed the Tenant that I was not in the position to resolve any issues they have with the strata, its bylaws, its hearing structure, or its previous findings. I also stated to the Tenant that I was not in the position to make any finding of fact in respect of the two allegations of their smoking in 2022.

In response to the Tenant’s Application, I find the Landlord is not violating any part of the *Act* or the *Residential Tenancy Regulation*. Neither party presented a copy of the tenancy agreement; therefore, I cannot make a finding whether the Landlord is not in compliance with any part thereof.

I informed the Tenant in the hearing about the typical process involved with a landlord issuing a notice to end tenancy. In the situation described by the parties in this hearing, it appears the Landlord issuing an end-of-tenancy notice would be based on cause, *i.e.*, a reason indicated in s. 47 of the *Act*.

If the Tenant fears eviction on the basis of incorrect evidence gathered by the Landlord, they have a legal right to challenge that evidence, and the truth of the Landlord’s claims, in a hearing process that is focused on any end-of-tenancy notice served by the Landlord. An arbitrator at the Residential Tenancy Branch would decide on the validity of the issued one-month notice for cause (by s. 47), in a hearing process. That arbitrator would examine the Landlord’s evidence, and if necessary, make a judgment on the landlord’s or tenant’s credibility.

The Tenant here pre-empted the entire process by seeking clarification on this point. I make no findings of fact that would enter into a proper hearing on the validity of any notice to end tenancy the Landlord may choose to issue.

The Tenant was otherwise not specific on the Landlord violating any particular section of the *Act*, or the tenancy agreement. I decline to order the Landlord's compliance on any particular point. I dismiss the Tenant's Application, without leave to reapply, for this reason.

I grant the Tenant no reimbursement of the Application filing fee. There was really no need for this hearing which turned into an information session for their own benefit. There were no subjects covered that could not have been answered through questions to the Residential Tenancy Branch's general information agents.

### Conclusion

With my review of the evidence and the testimony of the parties in this hearing, I dismiss the Tenant's Application for the Landlord's compliance with the *Act* and/or the tenancy agreement. I grant no reimbursement of the Application filing fee.

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: May 23, 2023

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Residential Tenancy Branch