



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### **Dispute Codes:**

CNC, FF

### **Introduction**

This Application for Dispute Resolution by the tenant was seeking to cancel a One-Month Notice to End Tenancy for Cause dated June 22, 2014, a copy of which was submitted into evidence. The tenant is also claiming monetary compensation and an order to force the landlord to comply with the Act.

The hearing is also to deal with an application by the landlord seeking to end the tenancy based on the One Month Notice to End Tenancy for Cause and a breach of a material term of the tenancy agreement by the tenant.

Both parties were present at the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained. The participants had an opportunity to submit documentary evidence prior to this hearing, and the evidence has been reviewed. The parties were also permitted to present affirmed oral testimony and to make submissions during the hearing. I have considered all of the relevant testimony and evidence that was properly served.

### **Preliminary Matter**

#### **Severing Other Matters in Tenant's Application**

In regard to the tenant's monetary claim for compensation and the tenant's request for an order to force the landlord to comply with the Act, I find that the portion of tenant's application seeking to cancel the 1 Month Notice takes precedence over or requests including the monetary claim or an order to force the landlord to comply with the Act.

The Residential Tenancy Rules of Procedure, Rule 2.3 states that, in the course of the dispute resolution proceeding, if the arbitrator determines that it is

appropriate to do so, they may dismiss the unrelated disputes contained in a single application with or without leave to reapply.

In this instance, I find that the tenant's other claims against the landlord are separate and distinct issues which are not part of the dispute relating to the Notice to End the tenancy.

Accordingly, I sever the tenant's monetary claim and request for an order to comply from the main issue before me, that being the question of whether or not this tenancy will continue or be terminated in accordance with the One Month Notice to End Tenancy for Cause.

Therefore these other matters will not be heard and these portions of the tenant's application are hereby dismissed with leave to reapply. Accordingly, this hearing will proceed only with respect to the determination of the cross applications dealing with the One Month Notice to End Tenancy for Cause.

#### Landlord's Evidence

The tenant testified that they did not receive the landlord's evidence. However, the hearing proceeded as I found that the tenant's evidence package contained most of the relevant evidence, including duplicates of the landlord's submissions.

To accommodate the tenant, the landlord was given the opportunity to verbally present their evidence and the tenant was able to respond to this evidence.

#### **Issue(s) to be Decided**

Should the One Month Notice to End Tenancy for Cause be cancelled?

#### **Background and Evidence**

The tenancy began in October 2014. Submitted into evidence was a copy of the One-Month Notice to End Tenancy for Cause dated June 22, 2014 indicating that the landlord was ending the tenancy for the following causes under section 47 of the Act:

- (d) the tenant or a person permitted on the residential property by the tenant has
  - (i) significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property,
  - (ii) seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant, or
  - (iii) put the landlord's property at significant risk;

(e) the tenant or a person permitted on the residential property by the tenant has engaged in illegal activity that

- (i) has caused or is likely to cause damage to the landlord's property,
- (ii) 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
- (iii) has jeopardized or is likely to jeopardize a lawful right or interest of another occupant or the landlord;

(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 in June 2013 the landlord received complaints from a neighbour in the complex about the tenant smoking in the unit and the tenant was cautioned by the landlord at that time that this is a violation of the lease and the strata bylaws.

The landlord testified that this issue arose again in March 2014 but the tenant denied that they had been smoking on the premises. The landlord pointed out that when they entered the tenant's unit in the course of a normal inspection, they noticed that he tenant possessed a "bong" and that there was "shake" on the coffee table. The landlord's position is that this constitutes verification that the tenant is smoking an illegal substance on the premises.

The landlord stated that the tenants committed other violations such as neglecting to clean up their dog droppings, using a pathway through a garden area to enter their unit , improper placement of the barbeque causing damage and not controlling their dog when potential buyers come to view the condo unit, which is for sale..

The tenant denied all of the landlord's allegations and stated that they do not smoke on the premises. The tenant testified that they clean up after their dog and do not make it a practice to enter the unit through the pathway in the garden. The tenant testified that the landlord and their agents have been intrusive. According to the tenant, they feel that the One Month Notice to End Tenancy for Cause has no merit and was issued in reprisal for the tenants insisting that the landlord respect their rights as tenants.

The tenants seek to have the Notice cancelled.

## **Analysis**

I find that none of the alleged conduct that the landlord has presented would meet the criteria to qualify as significantly interfering with or unreasonably disturbing others, seriously jeopardizing the health or safety or a lawful right or interest of the landlord or another occupant or placing the landlord's property at significant risk. I also find that the tenant has not been proven to have engaged in illegal activity that is likely to cause damage to the landlord's property, adversely affects the quiet enjoyment, security, safety or physical well-being of another occupant or jeopardizes a lawful right or interest of another occupant or the landlord.

In any case, I find that the landlord has not sufficiently proven that the tenants committed the alleged transgressions, with the exception of the smoking violation.

In regard to the cause put forth warranting termination of the tenancy for a breach of a material term of the tenancy and the tenant's failure to correct the situation within a reasonable time after being notified in writing, I find that the landlord carries burden of proof to establish that a breach of a material term in the tenancy has occurred. This entails satisfying the arbitrator that the following three components exist:

- There must be a clear term contained in the tenancy agreement,
- This term must fit the definition of being "*material*",
- There must be a genuine breach of the material term.

Determining the materiality of a term requires a focus upon its importance in the overall agreement and it falls on the person relying on the term to present evidence that it qualified as a material term to both of the parties signing the agreement at the time.

I find that the term prohibiting smoking does meet the criteria of being a material term and I accept the landlord's evidence that the tenant had likely breach the term over a year ago by smoking on the premises. I find that this did occur in June 2013 when the original complaint was made against the tenants.

However, I accept the tenant's testimony that they corrected this breach within a reasonable time after being warned to do so and have not breached the term since that time. I find that the landlord's conclusion that the tenants are smoking, based on items that the landlord observed in the tenant's unit does not constitute sufficient proof that warrants ending this tenancy for cause.

Based on the evidence, I find that the One-Month Notice to End Tenancy for Cause is inadequately supported by evidence, and must therefore be cancelled.

Accordingly, I order that the One Month Notice to End Tenancy for Cause dated June 22, 2014, is hereby cancelled and of no force nor effect.

I also order that the parties must restrict all communications to written form and refrain from contact in person or by telephone unless necessary.

I find that the tenant is entitled to be reimbursed the cost of this application and hereby order the tenant to deduct \$50.00 from the next rental payment due to the landlord.

### **Conclusion**

The tenant is successful in the application and the One-Month Notice to End Tenancy dated June 22, 2014, is cancelled. The landlord is not successful in the application and the landlord's request for an Order of Possession is dismissed.

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: September 15, 2014

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Residential Tenancy Branch

