



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding VANCOUVER PARK LANE TOWERS  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      CNC

### Introduction

This matter dealt with an application by the Tenant to cancel a Notice to End Tenancy for Cause.

The Tenant said she served the Landlord with the Application and Notice of Hearing (the “hearing package”) by personal delivery on February 5, 2015. Based on the evidence of the Tenant, I find that the Landlord was served with the Tenant’s hearing package as required by s. 89 of the Act and the hearing proceeded with both parties in attendance.

### Issues(s) to be Decided

1. Is the Tenant entitled to an order to cancel the Notice to End Tenancy?

### Background and Evidence

This tenancy started in August 1988 as a month to month tenancy. Rent is \$830.00 per month payable in advance of the 1<sup>st</sup> day of each month. The Tenant paid a security deposit of \$262.00 on August 5, 1988.

The Landlord said she served the Tenant with a 1 Month Notice to End Tenancy for Cause dated January 28, 2015 on January 28, 2015 by posting it on the door of the Tenant’s rental unit. The Effective Vacancy date on the Notice is February 28, 2015. The Tenant is living in the unit and the Landlord said they want to end the tenancy.

The Landlord continued to say the Tenant had a fire in her kitchen on the night of December 23, 2014. The Landlord said the Tenant did not phone the Fire Department and did not tell the Landlord about the fire until the next day. When the Landlord inspected the unit on December 24, 2014 the Landlord realized this was a restoration job not just a cleanup situation. The Landlord said they have made an insurance claim and have had a restoration company look at the damage to the rental unit.

Further the Landlord said the Tenant moved out for a few days after the fire and then the Landlord found a vacant unit in the rental complex for the Tenant to move into temporarily while her rental unit aired out. The Landlord continued to say the rental unit must be vacated and all the contents removed in order to properly repair the unit. As well the Landlord said the contents may or may not be able to be cleaned and if contents with the smoke and soot smell comes back into the rental unit it will contaminate the rental unit and possibly other areas in the rental complex. As a result the Landlord said they would like to end the tenancy and they have issued a 1 Month Notice to End Tenancy for Cause. The reasons on the Notice are:

1. The Tenant has significantly interfered with or unreasonable disturbed another occupant or the landlord.
2. The Tenant has seriously jeopardized the health and safety or lawful rights of another occupant or the landlord.
3. The Tenant has put the Landlord's property at significant risk.

The Landlord said the smell in the rental unit and the potential of smell from the Tenant's contaminated belongings are disturbing and interfering with the other occupants of the building. As well because the Tenant did not phone the Fire Department or contact the Landlord when she discovered the smoke and potential fire on the night of December 23, 2014 the Tenant put herself, other tenants and the Landlord's property at significant risk.

The Tenant said that she has lived in the rental unit since 1988 and she has been an excellent tenant. As well the Tenant said the Landlord has done few improvements to her unit over the 27 years. The Tenant said approximately ten years ago the smoke detector was installed and in the last year the Landlord replaced the stove hood, the stove, the frig and the toilet. The Tenant said this rental unit is her home.

The Tenant continued to say that she did put a pound of butter on the stove top and then she forgot about it until she smelled smoke at 4:00 a.m. on December 24, 2014. The Tenant said she first thought it was another building because the smoke alarm did not sound off. The Tenant said she was in shock when she discovered the smoke was in her rental unit and she was a little annoyed so she started cleaning the mess and smoke damage. The Tenant said she cleaned all night and then went to the Office in the morning to tell the Landlord what happened.

Following this the Tenant said she spent a few days in a hotel and then moved back into a vacant unit in the rental complex that the Landlord allowed her to use. The Tenant thought that everything was OK and she would clean the unit and then continue the tenancy. The Tenant said she was shocked when the Landlord gave her the Notice to End Tenancy for Cause on January 28, 2015. The Tenant said she has been a long term tenant and a good tenant and she thinks this is unfair.

Further the Tenant asked the Landlord if there have been any complaints about smell or other things relating to the smoke damage in her unit. The Landlord said there have been no complaints from the other tenants in the rental complex.

The Tenant continued to say that this situation would not have happened if the smoke detector was working. The Landlord said the smoke detectors were installed by a licensed electrician. The Landlord continued to say she did not know if the smoke detector was working the night of the fire because she did not know when the smoke detectors were last inspected. The Tenant said an inspection was scheduled about 4 years ago, but the inspection did not happen. The Landlord said they have fire inspections completed each year by the proper authorities and the rental complex has past these fire inspections. The Tenant Advocate said if the fire detector did not work then the Tenant is not fully responsible for the situation. The Landlord's Counsel said the Tenant still should have phoned the Fire Department or Landlord and because she did not the Tenant put the building and its occupancy at risk.

The Landlord said she tested the smoke detector a few days after the fire and the green light was on and the test beep sounded when she pushed the test button. The Tenant said the smoke detector did not work the night of the smoke and potential fire. The Tenant said that it may have been a result of the smoke detector and the stove hood light being on the same circuit and the heat from the stove and melting butter may have tripped the breaker.

The Tenant and the Tenant's Advocate made a settlement offer to the Landlord to continue the tenancy. The settlement offer was:

1. The Tenant would pay the insurance deductible of \$2,500.00 to the Landlord.
2. The Tenant would move out of the unit while repairs are completed.
3. The Tenant would pay the rent while the repairs are completed.
4. The Tenant would clean all her contents before moving it back in.
5. The Tenant would move back in on completion of the repairs.

The Tenant said she has made this offer because this is her home.

The Landlord and the Landlord's Counsel took some time to discuss the Tenant's offer and decided to decline it. The Landlord said the issue for her was the potential of re-contaminating the rental unit with the smoke and soot smells and potentially contamination of other spaces in the rental complex. The Landlord said she wants to end the tenancy but she is will to extent the effective vacancy date from February 28, 2015 on the Notice to End Tenancy dated January 28, 2015 to March 31, 2015. As well the Landlord said she would prefer to end the tenancy earlier and if the Tenant moves out earlier than March 31, 2015 the Landlord would rebate some of the rent paid by the Tenant for March, 2015. The Tenant said she wants to continue the tenancy in this unit.

Further the Landlord called four witnesses to testify.

The first witness H.B. was the manager of the rental complex. The Witness said the Tenant came to her office in the morning of December 24, 2014 asking about a cleaning company to clean her unit because of smoke damage. The Witness said she went to the Tenant's rental unit and saw there was extensively damage. The Witness called her manager and the insurance claim process was started.

The Witness confirmed that the Tenant moved into a vacant unit for the first part of January, 2015 while her unit was being accessed. The Witness continued to say the odour from the Tenant's belongings permeated the vacant unit she was using. The Tenant said the windows were left open in her unit and the smell had dissipated. The parties disagreed on whether the smell was dissipating or permeating in the Tenant's unit and other spaces in the rental complex. The Witness agreed there had been no complaints about the smell from other tenants and she did not notice the smell the last time she was on the floor that the Tenant's unit is on.

The Landlord's Counsel called the next witness T. who was the insurance claims adjuster. The Witness confirmed there was heat and smoke damage and that the smoke and soot smell was very difficult to remove from some contents of a rental unit. As a result the Witness said all the contents must be removed before any restoration work can begin. There was some discussion about the smell and whether it was toxic or not and the parties agreed they did not have the credentials to determine what was toxic. The Witness said the smoke and soot smell is very unpleasant and disturbing. The Tenant said the smell could be cleaned out of her belongings.

The Landlord's Counsel called their third Witness M. K. the electrician who installed the smoke detectors in the rental complex. The Witness said he was licensed and obtained a permit for the work and the smoke detectors were inspected and had passed the inspection. As well the Witness said he did not know how often or when the smoke detectors were tested as he does not do that kind of work.

The Landlord's Counsel called the fourth Witness P.D. who is the manager of the restoration company. The Witness said that his experience is that smoke and soot damage can be cleaned out of hard surface items but may not be able to be removed from porous items. The Witness said these porous items are Non Restorable and should be destroyed. As well the Witness said any Non Restorable items that are returned to a unit will contaminate the unit with the residue smoke and soot smell. The Tenant said she will clean all the items she can and she has already disposed of items that she didn't think would be restorable.

The Tenant said in closing that she wants to continue the tenancy but if she is evicted she is requesting more time to move out. The Tenant requested until March 31, 2015 if her application is not successful.

The Tenant's Advocate said the Tenant has made a generous offer to the Landlord to continue the tenancy and she requested the Landlord to think about it.

The Landlord's Counsel said in closing that the Notice to End Tenancy is a result of the Tenant causing the fire in the rental unit and the Tenant did not phone the fire department or the landlord when the fire happened. The Landlord's Counsel said this is negligence on the Tenant's part and it put the Landlord's building at risk and potentially the Tenant and other occupants of the building at risk. The Landlord's Counsel said this is grounds enough to end the tenancy.

### Analysis

In situations where a Landlord issues a Notice to End Tenancy for Cause and there are a number of reasons on the Notice, the Landlord only has to prove one of the reasons is valid to end the tenancy. In this situation the Landlord has given three reasons to end the tenancy and they are as follows:

1. The Tenant has significantly interfered with or unreasonable disturbed another occupant or the landlord.
2. The Tenant has seriously jeopardized the health and safety or lawful rights of another occupant or the landlord.
3. The Tenant has put the Landlord's property at significant risk.

The first reason is that the Tenant has interfered or disturbed other tenants or the landlord with the smell or the potential smell of smoke and soot in the Tenant's rental unit and belongings. The Landlord said the risk of re-contamination of the rental complex is a risk that they are not willing to take and as a result the tenancy should end. The Tenant questioned the Witness H.B. the manager of the rental complex and the Witness H.B. said she had received no complaints from other tenants about the smoke smell and she did not notice the smoke smell the last time she was on the floor where the Tenant's unit is located. I accept the testimony of both the Tenant and the Witness that there have been no complaints from other tenants and the smell has dissipated to the point where the Witness/manager did not notice it. Consequently I find the Tenant has established grounds to show the Landlord's reason of interference or disturbance is not valid.

The second and third reasons the Landlord has given to support ending the tenancy is that the Tenant seriously jeopardized the health and safety of other occupants or the landlord and put the Landlord's property at significant risk. The Landlord's Counsel said that the Tenant was negligent and put the other occupants and the landlord at risk when the Tenant caused the fire and did not phone the Fire Department or the Landlord when she discovered her unit was full of smoke. I accept the Landlord's Counsel's argument that the Tenant did cause the fire and the Tenant should have phone the Fire

Department or at least called the Landlord for assistance as soon as the Tenant discovered the smoke. As the Tenant said she was shocked to find the smoke in her unit and therefore she may not have known the extent of the potential fire the Tenant did put herself, other occupants and the landlord at a real safety risk. It is common knowledge when smoke or a fire is discovered in a rental complex the Landlord or the Fire Department should be informed immediately. The Tenant did not do this therefore; I find the Tenant seriously jeopardized the health and safety of other occupants in the rental complex and the Tenant has caused significant risk to the Landlord's property.

I find the Tenant has not established grounds to be successful in canceling the Landlord's 1 Month Notice to End Tenancy for Cause dated January 28, 2015. The Notice to End Tenancy stands in full effect.

I dismiss the Tenant's application without leave to reapply.

### Conclusion

The Tenant's application is dismissed without leave to reapply.

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: February 18, 2015

---

Residential Tenancy Branch

