



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNC, FF

### Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution (the “Application”) made by the Tenant to cancel a 1 Month Notice to End Tenancy for Cause (the “Notice”) and to recover the filing fee.

The Tenant and Landlord appeared for the hearing and provided affirmed testimony. The Landlord confirmed that he had received the Tenant’s Application and her documentary evidence prior to the hearing by registered mail. The Landlord confirmed that he had not provided any evidence prior to the hearing.

The hearing process was explained to the parties and they had no questions about the proceedings. Both parties were given a full opportunity to present evidence, make submissions to me, and cross examine the other party.

### Issue(s) to be Decided

Has the Tenant established that the Notice ought to be cancelled?

### Background and Evidence

Both parties agreed that this tenancy started on February 14, 2015 for a fixed term tenancy due to expire on February 29, 2016. Rent under the written tenancy agreement is payable by the Tenant for \$1,200.00 on the first day of each month.

The Tenant confirmed that she had been served with the Notice on February 16, 2015 by personal service. The Notice was provided into written evidence and shows an effective vacancy date of March 15, 2015. The reasons shown on the Notice for ending the tenancy were because the Tenant is alleged to have allowed herself and other people to engage in an illegal activity that has, or is likely to: damage the Landlord’s property; and adversely affect the quiet enjoyment, security, safety or physical wellbeing

of another occupant or the Landlord. The Tenant made her Application to dispute the Notice on February 23, 2015.

The Landlord alleged that the following day after the Tenant had moved in she was smoking cigarettes and marijuana in the rental suite. The Landlord testified that the rental building is a no smoking building and smoking is not allowed in the rental unit. The Landlord explained that the smoke coming from the Tenant's unit is affecting the other residents including their children. The Landlord testified that the smoke has the ability to affect his insurance policy if there were to be a resulting fire as well as causing smoke and odor damage to the rental unit.

The Tenant disputed the Landlord's oral testimony and explained that she had not been given any breach letter for smoke coming from her unit. The Tenant testified that she is allergic to cigarette smoke and denied that she smokes any kind of drug inside the rental suite. The Tenant pointed to several witness statements she had provided into written evidence which confirmed that she was not present in her rental suite on the date the Landlord alleges that she was smoking.

As the Tenant disputed the Landlord's allegations, the Landlord was asked whether he had any supporting or corroborating evidence to support his oral evidence. The Landlord replied that he had none.

### Analysis

Firstly, I find that the Landlord served the Tenant with a Notice that complied with Section 52 of the Act and I accept that the Tenant was personally served with the Notice on February 16, 2015. Secondly, I find that the Tenant made the Application to dispute the Notice within the time limits stipulated by Section 47(4) of the Act.

When a landlord issues a tenant with a Notice for the reasons in this case, the landlord bears the burden of proof in proving the reasons on the Notice disputed by the tenant. In this case, I find that the Landlord has failed to provide sufficient evidence to prove the Notice. The Landlord relied solely on his oral testimony as evidence of the reasons on the Notice and such serious allegations would require the need for documentary or corroborating evidence to support the Landlord's testimony which was disputed by the Tenant. Therefore, the oral evidence resulted in one party's word against the others. Where one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof has not met the onus to prove their claim and the claim must fail.

In this case, I find that the Landlord's allegations are not supported or corroborated in a way that they can be relied on for me to uphold the Notice. Therefore, I find that the lack of any documentary evidence such as witness statements, complaint letters, video footage, photographic evidence and witness testimony, does not convince me that the Landlord has met the burden of proof in this case. I find the Landlord's evidence is no more compelling than the Tenant's evidence and Landlord has not proved the Notice.

As a result, I cancel the Notice dated February 16, 2015. The tenancy will continue until it is ended in accordance with the Act. As the Tenant has been successful in cancelling the Notice, pursuant to Section 72(2) (a) of the Act the Tenant may recover the \$50.00 filing fee by deducting it from a future installment of rent.

### Conclusion

The Tenant's Application is granted and the notice to end tenancy is cancelled. The Tenant may recover her filing fee through her next installment of rent.

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: March 27, 2015

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Residential Tenancy Branch

