



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes: CNC OPC FF

### **Introduction**

This hearing dealt with an application by the tenant pursuant to the *Residential Tenancy Act* (the Act) for orders as follows:

- a) To cancel a notice to end tenancy for cause pursuant to section 47;
- b) To suspend or set conditions on the landlord's right to enter the rental unit, pursuant to section 29;
- c) To compensate the tenant for the disturbance of his peaceful enjoyment contrary to section 28 of the Act;
- d) To recover his security deposit plus one month's rent because he has to relocate due to the landlord's activities; and
- e) To recover the filing fee for this Application.

Service:

The Notice to End Tenancy is dated August 6, 2015 to be effective September 6, 2015 and it was served by posting it on the door. The effective date on the Notice is automatically corrected to September 30, 2015 pursuant to section 53 of the *Residential Tenancy Act* as a one month Notice to End Tenancy for cause must give a full month's notice and end the tenancy on the day before the day in the month that rent is payable under the tenancy agreement according to section 45 (1) (b). The tenant /applicant gave evidence that they personally served the Application for Dispute Resolution and the landlord agreed they received it. I find the documents were legally served for the purposes of this hearing.

### **Preliminary Issue:**

The landlord's first and last names as respondent were reversed. This was corrected.

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

Has the landlord proved on the balance of probabilities that there is sufficient cause to end the tenancy? Or is the tenant entitled to any relief?

Has the tenant proved on the balance of probabilities that the activities of the landlord illegally disturbed his peaceful enjoyment and caused him to relocate? If so, to how much compensation has he shown entitlement? Is the tenant entitled to recover his security deposit pursuant to section 38 of the Act?

### **Background and Evidence**

Both parties, the landlord's lawyer and witnesses attended the hearing and were given opportunity to be heard, to provide evidence and to make submissions. The undisputed evidence is that the tenancy commenced in January 2015 on a fixed term lease to expire January 1, 2016. Rent was \$750 a month and a security deposit of \$375 was paid December 29, 2014.

The landlord served a Notice to End Tenancy for the following reasons:

- a) The tenant has significantly jeopardized the health or safety or lawful rights of another occupant or the landlord; and
- c) The tenant has engaged in illegal activity that adversely affects the quiet enjoyment, security, safety or physical wellbeing of another occupant or the landlord.

The landlord outlined the problem. She said that the tenant was smoking marijuana in his unit and this caused the smell and smoke to come through the vents into her rooms above, making her very nauseous and ill. She pointed out that her advertisement said there was no smoking in the unit and she had a verbal discussion with the tenant and he agreed to this provision. Her gardener said he knew the smell of marijuana from previous experiences and he smelt it coming up the vents in the landlord's home.

He described a dispute that occurred at the time of final inspection. He said the tenant vacated on September 15, 2015. He said the tenant returned the keys and then snatched them back and there was a heated discussion. The police were called as it was a stalemate. The tenant did vacate and came back to clean on September 15, 2015. This was the first indication that the tenant had vacated and the question of whether or not to set aside the Notice to End Tenancy was moot. I declined to hear the other witnesses testifying to cause for ending the tenancy.

I went over the tenant's claims in his Application Summary and we agreed that it was no longer relevant to set aside the Notice to End Tenancy or to set conditions on the landlord's right to enter the rental unit as he had already vacated. The parties discussed the security deposit and the tenant said he had not yet provided his forwarding address in writing to the landlord. At his point, he requested the landlord leave the hearing so he could supply an address for delivery of this decision to me. The landlord and her lawyer left the conference.

After giving me his address, the tenant wanted to discuss compensation for harassment; however, I declined to take further evidence on this as the other parties had left the conference at the tenant's request and they would not be afforded the opportunity to answer to the case against them. We again discussed section 38 of the Act. I did point out to the tenant that the Police had been involved and there was some evidence on the relationship between the parties. Included with the evidence is a copy of the Notice to End Tenancy, an advertisement to rent, a description of an incident on July 10, 2015, letters and Police involvement reports.

On the basis of the documentary and solemnly sworn evidence presented for the hearing, a decision has been reached.

**Analysis:**

As discussed with the parties in the hearing, the onus is on the landlord to prove on a balance of probabilities that they have good cause to evict the tenant. However, I find it is moot in this case as the tenant vacated and the tenancy ended. Although the Notice to End Tenancy gave an end date of September 30, 2015 (as automatically corrected by section 53), I find the parties gave evidence that they had mutually agreed to end the tenancy on September 15, 2015. I dismiss the Application of the tenant to cancel the Notice to End Tenancy for cause as he has vacated.

In respect to the tenant's application to suspend or set limits on the landlord's right to enter the rental unit, I find this is moot also as the tenant has vacated. However, I find that section 29 of the Act gives the landlord the right to do an inspection of the premises on twenty four hour notice, whether or not the tenant agrees. I find the evidence in the file is that he did not agree and this was part of the ongoing altercation between the parties. The landlord thought he was refusing because he was smoking marijuana which was causing her health problems.

I find the evidence of the landlord credible and I prefer it to the evidence of the tenant in respect to the cause cited, namely, that he or a person permitted on the property by him seriously jeopardized the health or safety or lawful rights of the landlord by smoking contrary to the advertised use of the unit and their oral discussions. Witnesses support the landlord's oral sworn testimony and letters written at the time such as the letters dated July 20, and August 4, 2015.

The August letter also noted that the tenant had locked himself out of his unit five times over the past two months which was causing serious inconvenience to the landlord. Another letter from the tenant dated June 29, 2015 states he is formally disputing the amount of rent for he felt he was being overcharged.

For the above reasons, I dismiss the application of the tenant to cancel the Notice to End Tenancy. I find the tenancy terminated on September 15, 2015 as mutually agreed. As explained to the tenant in the hearing, his Application for the return of his security deposit is dismissed as it is premature; he has never provided his forwarding address in writing to the landlord as required by section 38 of the Act and he did not disclose it in the hearing.

Regarding his claim for compensation of one month's rent for harassment, I find harassment is defined in the Dictionary of Canadian Law as "engaging in a course of vexatious comment or conduct that is known or ought reasonably to be known to be unwelcome". I find insufficient evidence in this case to support the tenant's allegation of harassment by the landlord. I find that asserting legal rights to inspect a suite pursuant to section 29 of the Act or insisting that your tenant not smoke in the suite and serving a Notice To End Tenancy under section 47 of the Act

does not constitute harassment. In examining the letters from the landlord, I find they were respectful in asking the tenant to cease smoking as it was causing her health problems or asking him to pay rent that was owed on September 1, 2015. In examining the Police reports, I find the Police noted that both parties appeared to be unreasonable at times and that the tenant insisted they not enter his suite and that no photographs be taken. The Police noted that the tenant, although disrespectful, was not deemed to be a threat to anyone. In short, although there was some disagreement between the landlord and tenant, I find insufficient evidence that she was engaging in a course of vexatious conduct or that the tenant had to move because of her conduct. I find he had to move because the landlord ended his tenancy because he contravened the 'no smoking' provision for the unit. I dismiss this portion of the tenant's claim for a month's rent in compensation.

**Conclusion:**

The Application of the Tenant to set aside the Notice to End Tenancy is dismissed. His Application for the return of his security deposit is also dismissed as it is premature and I give him leave to reapply. I dismiss the tenant's claim for a month's rent in compensation for alleged actions of the landlord. I find he is not entitled to recover his filing fee due to his lack of success.

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: October 08, 2015

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Residential Tenancy Branch

