



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPC, FF

### Introduction

This hearing was convened by way of conference call in repose to the landlord's application for an Order of Possession for cause and to recover the filing fee from the tenants for the cost of this application.

The tenants and landlord attended the conference call hearing, gave sworn testimony and were given the opportunity to cross exam each other on their evidence. The landlord provided documentary evidence to the Residential Tenancy Branch and to the other party in advance of this hearing. All evidence and testimony of the parties has been reviewed and are considered in this decision.

### Issue(s) to be Decided

Is the landlord entitled to an Order of Possession based on the reasons given in the One Month Notice to End Tenancy?

### Background and Evidence

Both Parties agree that this month to month tenancy started on November 01, 2010. Rent for this unit is \$850.00 per month and is due on the first day of each month in advance.

The landlord testifies that the tenants were served a One Month Notice to End Tenancy on December 29, 2011 in person. This notice has an effective date of January 26, 2012 and gave the following reasons to end the tenancy:

- 1) 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,
- 2) The tenant or a person permitted on the residential property by the tenant has engaged in illegal activity that has
  - (i) Damage the landlords' 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) Jeopardized a lawful right or interest of another occupant or the landlord

The landlord testifies that he sent the tenants a face book message on September 20, 2011 about his concerns that the tenants or their guests have been smoking marijuana in or on the property (copy of message provided). The landlord testifies that either the tenants or their invited guests have been smoking marijuana in the unit or outside the unit and the smell of this illegal substance filters into the landlords unit above. The landlord testifies that this has significantly disturbed the landlord, his family and guests.

The landlord testifies that he has kept a note of the dates and times this occurs but has not provided this document in evidence. The landlord testifies he served the tenants with the Two Month Notice and an accompanying letter which notifies the tenants that they are receiving the eviction notice for repeated incidents of smoking marijuana in the suite. This is contrary to the tenancy agreement as well as the criminal code of Canada, damaging the premises, and violates the landlord's rights and those of the landlord's family to a reasonable quality of life.

The tenants testify that they did not know what reasons the landlord gave on the Notice as they only received page one of the Notice and the letter from the landlord informing the tenants they were being evicted for smoking marijuana. The tenant testifies that the second page they received was of recycled paper with an advertisement on it and was not the second page of the One Month Notice.

The tenants' testify that neither they nor their guests smoke marijuana in or on the premises. The tenant agrees that some of their guests do smoke marijuana but the tenant states these guests are not allowed to smoke on the property and are made to get into their cars and smoke elsewhere. The female tenant testifies that she does not even smoke cigarettes and if any friends come to visit and want to smoke a cigarette they have to smoke outside the unit.

The tenants testify that the neighbours in the adjacent property do smoke marijuana and suggest that the landlord smells the smoke coming from the neighbour's property.

### Analysis

I have carefully considered all the evidence before me, including the sworn testimony of both parties. In this matter, the landlord has the burden of proof and must show (on a balance of probabilities) that grounds exist (as set out on the Notice to End Tenancy) to end the tenancy. This means that if the landlord's evidence is contradicted by the tenant, the landlord will generally need to provide additional, corroborating evidence to satisfy the burden of proof. The landlord has provided very little corroborating evidence to support his claim that the tenants are responsible for the smell of marijuana from either the tenants or their guests. It is not enough for the landlord to suspect the smell of marijuana is coming from the tenants unit and although the landlord testifies that he has documented the dates and times the landlord has not provided copies of this documentary evidence. Therefore in the absence of any significant corroborating evidence, I find the landlord has not provided sufficient evidence to show that grounds exist to end the tenancy.

I am also not satisfied that the tenants were served a legal Notice to end the tenancy. In order for a legal notice to be valid and enforceable it must be complete. The landlord has provided two pages of the One Month Notice however the tenants' dispute that they received both pages and state the second page was a recycled advertisement. I also find the copy of the Notice I have been sent is unsigned by the landlord. Consequently, I cannot determine whether the tenants were served with the complete legal Notice.

As a result, the landlord has failed to meet the burden of proof as to the reasons on the Notice and failed to satisfy the burden of proof that a legal and enforceable Notice was served on the tenants. Therefore the Notice is cancelled and the tenancy will continue.

#### Conclusion

The landlord's application is dismissed in its entirety 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 01, 2012.

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Residential Tenancy Branch