



# 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 repose to the tenant's application to cancel a Notice to End Tenancy for cause and to recover the filing fee from the landlords for the cost of this application.

The tenant and landlords attended the conference call hearing, gave sworn testimony and were given the opportunity to cross exam each other on their evidence. The tenant provided some 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 tenant entitled to have the One Month Notice to End Tenancy cancelled?

### Background and Evidence

Both parties agree that this tenancy started on December 28, 2011. Rent for this unit is \$550.00 and is due on the 1<sup>st</sup> day of each month in advance.

The landlord testifies that the tenant was served a One Month Notice to End Tenancy for cause on January 25, 2012. This Notice has an effective date of February 25, 2012 and gave the following reason to end the tenancy:

The tenant or a person permitted on the residential property by the tenant has engaged in illegal activity that has or is likely to

- (i) Damage the landlords' property
- (ii) adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant or the landlord.

The landlord testifies that on December 30 the landlords noticed the smell of marijuana coming from the tenants unit. The female landlord spoke to the tenant about this and informed the tenant that it was rude and asked the tenant not to smoke marijuana in the unit. The landlord testifies that the next day they smelt marijuana again from the tenants unit and in the hallways of this multi person dwelling. The tenant was served with a warning letter dated December 31, 2012 which informed the tenant that this was her second warning and if marijuana was smelt coming from her unit again she would be served with an eviction notice.

The landlord testifies that other tenants complained about the smell of marijuana from the tenants unit and in the hallways. The landlords' testify that this smell also made it difficult for them to show other units to prospective tenants. The landlords also express concern for any young children coming into the building and smelling marijuana. The landlords testify that after the warning letter was given to the tenant they smelt marijuana again coming from under the tenant's door. With this smell and after finding some kind of feces tracked from the laundry room to the tenants door after the tenant had used the laundry room the landlords issued and served the tenant with a One Month Notice to End Tenancy on January 25, 2011. The landlord testifies that after serving the tenant with the Notice the tenant said she was sorry about smoking marijuana and would stop doing it.

The tenant testifies that she did not get a verbal warning from the female landlord on December 30, 2011. The tenant testifies that the female landlord just asked the tenant if the tenant could smell marijuana and said it was rude. The tenant agrees she did get a

warning letter from the landlords about smoking marijuana and agrees she does smoke marijuana in her unit.

The tenant disputes the landlords' testimony however that the One Month Notice was given because the tenant smokes marijuana. The tenant testifies when she received the One Month Notice from the landlords she spoke to the landlord and was told the Notice had been given because the tenant had tracked dog feces from the laundry unit to her door. The tenant testifies as she does not own a dog and the only dog is owned by the landlord the tenant states she filed her application to dispute the Notice and seeks to have the Notice cancelled.

The landlords verbally request at the hearing that the Notice is upheld and seek an Order of Possession.

### Analysis

I have carefully considered all the evidence before me, including the sworn testimony of both parties. I refer the Parties to the Residential Tenancy Policy Guidelines #32 which deals with illegal activities in connection with a tenancy. Within this section of the Guidelines the term "illegal activity" would include a serious violation of federal, provincial or municipal law, whether or not it is an offense under the Criminal Code. It may include an act prohibited by any statute or bylaw which is serious enough to have a harmful impact on the landlord, the landlord's property, or other occupants of the residential property.

The party alleging the illegal activity has the burden of proving that the activity was illegal.

In considering whether or not the illegal activity is sufficiently serious to warrant terminating the tenancy, consideration would be given to such matters as the extent of interference with the quiet enjoyment of other occupants, extent of damage to the

landlord's property, and the jeopardy that would attach to the activity as it affects the landlord or other occupants.

For example, it may be illegal to smoke a single marijuana cigarette. However, unless doing so has a significant impact on other occupants or the landlord's property, the mere smoking of the marijuana cigarette would not meet the test of an illegal activity which would justify termination of the tenancy.

The landlords argue that the smell of Marijuana coming from the tenants unit is affecting the quiet enjoyment of other tenants and the landlords however the landlords have provided no complaint letters or witnesses to determine that other tenants are being affected by this tenants smoking of marijuana. The landlords argue that the smell of marijuana in the hallways puts off potential renters and impacts on children in the building. However, the landlords have provided no evidence to support this. The landlords also mention a matter with feces tracked from the laundry room to the tenant's door; however, the landlords have provided no evidence to support that this was caused by either an illegal activity or by the tenant or a guest of the tenant.

While I agree that the smoking of marijuana is still considered to be an illegal activity in Canada the burden of proof falls to the landlords to support how the tenant, in smoking marijuana, has damaged the landlords property and how this has adversely affected the quiet enjoyment, security, safety or physical well-being of another occupant or the landlords of the residential property.

In this matter I find the landlords have not met the burden of proof and consequently the One Month Notice to End Tenancy is cancelled.

Although there is insufficient evidence at this time to support the landlords claim, the tenant now has written notice that a repeat of this behaviour may result in the tenancy ending.

Conclusion

The tenant's application is allowed. The one Month Notice to End Tenancy for Cause dated January 25, 2012 is cancelled and the tenancy will continue. As the tenant has been successful in setting aside the Notice, she is entitled to recover her \$50.00 filing fee for this proceeding and may deduct that amount from her next rent payment when it is due and payable to the landlord.

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 17, 2012.

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Residential Tenancy Branch