



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPR, MNR, MNSD, FF, CNR, CNC, OPC

### Introduction

This hearing dealt with an application by the landlord for an order of possession, a monetary order and an order to retain the security deposit in partial satisfaction of the claim. Both parties participated in the conference call hearing. Both parties gave affirmed evidence.

### Issues to be Decided

Is the landlord entitled to an order of possession?

Is the landlord entitled to a monetary order for unpaid rent and loss of income?

Is the tenant entitled to have the notice to end tenancy set aside?

### Background and Evidence

The tenancy began on or about April 1, 2013. Rent in the amount of \$750.00 is payable in advance on the first day of each month. At the outset of the tenancy the landlord collected from the tenant a security deposit in the amount of \$750.00. The landlord advised that the tenant has caught up in all unpaid rent and that they are only seeking to enforce a One Month Notice to End Tenancy for Cause and seek an order of possession. Based on that information, the landlords request for a monetary order is dismissed.

The landlord gave the following testimony:

The landlord stated that they have a strict no smoking and no drugs policy on their property and that the tenant acknowledged and agreed to this at move in. The landlords stated that they noticed the strong smell of marijuana in and around their property shortly after the subject tenant moved in. The landlords stated that In May 2013 the tenant conceded that she used marijuana to treat her pain. The landlords stated that they had verbally asked the tenant to stop smoking the marijuana in and around the property as it was causing them health difficulties. The landlords stated that they did not want this behaviour going on as they had a three year old child and newborn as of June 2013. The landlords stated that they repeatedly text requests along with verbal requests for the tenant to stop but to no avail. The landlords stated that the amount of smoke and smell had gotten so bad that they frequently slept at the landlords' parents' house next door. The landlords stated that they have become fearful for their health and the health of their small children. The landlords stated that they have been physically pushed out of their own home and have lost the enjoyment of their own property.

The tenant gave the following testimony:

The tenant stated that she never smoked marijuana on the property. The tenant stated that she uses marijuana to help with her fibromyalgia and that she "goes the extra mile and smokes it on the corner". The tenant stated that the landlords are not being truthful in their testimony and she would prefer to remain a tenant on this property.

### Analysis

When a landlord issues a notice under Section 47 they must provide evidence for the basis of that notice. The landlord issued the notice on the basis that the tenant was adversely affecting the quiet enjoyment, security, safety, or physical well being of another occupant or the landlord. I have considered both parties testimony and reviewed their documentary evidence in coming to a decision. I accept the version of events as submitted by the landlords I found the landlords to be clear, concise and consistent when giving testimony. The landlords were so disturbed by these events that

they had to leave their own home. I found the tenant to be contradictory at times and less than compelling. The tenant was not forthright with the landlord about her marijuana use even though she was aware of the landlords' position on smoking and drugs. Based on all the evidence before me and on the balance of probabilities I am satisfied that the landlord has provided sufficient evidence to support the One Month Notice to End Tenancy issued on August 6, 2013; that notice remains in full effect and force.

I find that the landlord is entitled to an order of possession. The tenant must be served with the order of possession. Should the tenant fail to comply with the order, the order may be filed in the Supreme Court of British Columbia and enforced as an order of that Court. The order of possession will take effect at 1:00 p.m. on September 30, 2013.

As the landlords have been partially successful in their application I find that they are entitled to the recovery of the \$50.00 filing fee. The landlords are entitled to withhold \$50.00 from the security deposit in satisfaction of that claim.

#### Conclusion

The landlord is granted an order of possession. The landlord is entitled to retain \$50.00 from the security deposit.

The tenants' 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: September 17, 2013

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Residential Tenancy Branch

