



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding MAETRO VANCOUVER HOUSING CORPORATION  
and [tenant name suppressed to protect privacy]

## **DECISION**

### **Dispute Codes:**

*OPC, OPB, CNC, FF*

### **Introduction**

This hearing dealt with applications by the landlord and the tenant, pursuant to the *Residential Tenancy Act*. The landlord applied for an order of possession and the tenant applied for an order to cancel the notice to end tenancy. Both parties applied for the recovery of the filing fee. Both parties attended the hearing and were given full opportunity to present evidence and make submissions.

### **Issues to be decided**

Is the landlord entitled to an order of possession or should the notice to end tenancy be set aside?

### **Background and Evidence**

The tenancy started in June 2002. On August 19, 2013, the landlord served the tenant with a notice to end tenancy for cause. The reasons for the notice were that the tenant has engaged in illegal activity that has adversely affected the quiet enjoyment, security, safety or physical well-being of another occupant or the landlord, has jeopardized a lawful right or interest of another occupant or the landlord and the tenant has breached a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.

The landlord stated that starting June 27, 2008, a complaint was received by an occupant of the building regarding the tenant's use of marijuana in the rental unit. The complainant stated that the smoke and smell of marijuana came into her living space. The landlord followed up with a warning letter to the tenant reminding him of his responsibilities and the terms and conditions of the tenancy agreement and the crime free addendum he had signed.

The landlord stated that two more similar complaints were received on March 21, 2009 and March 18, 2013, which were also followed up with warning letters. A final complaint was received on August 15, 2013 which was followed up with the notice to end tenancy.

The tenant agreed that he smoked marijuana but denied having done so on the property of the landlord. The tenant also stated that he did not receive any warning letters from the landlord and was not aware of the complaints from the other occupants of the building until he received the evidence package.

The landlord stated that he served the warning letters by sliding the letters under the tenant's door. The tenant stated that he has a pet cat that may have got a hold of the letters.

### **Analysis**

In order to support the notice to end tenancy, the landlord must prove that the tenant has engaged in illegal activity that has adversely affected the quiet enjoyment, security, safety or physical well-being of another occupant or the landlord, has jeopardized a lawful right or interest of another occupant or the landlord and the tenant has breached a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.

Based on all the evidence before me, I find that the landlord notified the tenant of the breach of a material term by sliding a warning letter under his front door. The tenant denies having received any notification of any breaches.

Section 88 of the *Residential Tenancy Act* provides methods of service of documents. Sliding documents under the door is not one of the approved methods of service. Therefore, I have to give the tenant the benefit of the doubt and find that the tenant was not notified of his alleged breach of a material term of the tenancy agreement and the addendum to the tenancy agreement.

I therefore allow the tenant's application and set aside the landlord's notice to end tenancy dated August 19, 2013. As a result, the tenancy shall continue in accordance with its original terms.

The tenant would be wise to refrain from giving the landlord and the other occupants of the building reason to complain about the tenant's use of marijuana inside his rental unit or in the common areas of the building.

I find it timely to put the tenant on notice that, if these alleged behaviours were to occur in the future and another notice to end tenancy issued, the record of these events would form part of the landlord's case should it again come before an Arbitrator, for consideration.

Since the landlord has not proven her case, she must bear the cost of filing her application. The notice is set aside and therefore the tenant is entitled to the recovery of the filing fee. The tenant may make a onetime deduction of \$50.00 from a future rent.

### **Conclusion**

The notice to end tenancy is set aside and the tenancy will continue.

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 04, 2013

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Residential Tenancy Branch

