



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding SALMO SENIOR CITIZENS HOUSING SOCIETY  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      CNC

### Introduction

This hearing was convened by conference call in response to an Application for Dispute Resolution made by the tenant to cancel a One Month Notice to End Tenancy for Cause.

The tenant served the landlord with a copy of the application and Notice of Hearing documents personally and the landlord confirmed receipt of the documents. Based on this, I find that the landlord has been served in accordance with the *Residential Tenancy Act* (referred to as the Act). Both parties also submitted evidence to both the Residential Tenancy Branch and to each other in accordance with the Act.

One of the landlords appeared for the hearing and provided affirmed testimony during the hearing. The tenant appeared for the hearing with an advocate and also provided affirmed testimony. All relevant evidence in relation to this application was carefully considered in this decision.

### Issue(s) to be Decided

- Has the tenant made the application to dispute the notice to end tenancy within the allowable time limits?
- Is the tenant entitled to cancel the One Month Notice to End Tenancy for Cause issued by the landlord?

### Background and Evidence

Both parties agreed that the tenancy started on April 15, 2013 for a fixed length of one year. A tenancy agreement was completed and rent in the amount of \$291.00 is payable by the tenant on the first day of each month. The landlord collected a security deposit from the tenant before the tenancy started in the amount of \$129.00.

The rental unit is a one bedroom suite within a 'seniors only' building complex that houses other residential suites and includes communal areas.

The landlord testified that the tenant had allowed her son and his family, comprising of his wife and two children, to live as occupants in the tenant's rental suite from July,

2013 to October, 2013. The tenancy agreement only allowed for one tenant to occupy the unit. As a result, the landlord testified that by having so many people in the rental suite this created a disturbance to the other occupants in the form of noise throughout the early hours of the morning and during the day.

The landlord testified that it also came to their attention that the tenant had been babysitting in the apartment which was also resulting in noise levels that created a disturbance to other neighbouring occupants. The landlord testified that she had received complaints from the tenant's neighbouring units, including the adjacent, above and below neighbours due to the fact that the tenant was smoking marijuana and the smell was interfering with their peaceful and quiet enjoyment of the building.

As a result, the landlord and the landlord's witness for this hearing both attended the tenant's rental unit on September 25, 2013 to issue her with a breach letter titled 'Without Prejudice.' The breach letter was provided as evidence and explains to the tenant that the above issues have been brought to the attention of the landlord and that babysitting in the apartment and having her granddaughter living with her, as opposed to visiting her, were violations of her tenancy agreement. In the letter the landlord indicates that these would be grounds for eviction.

During the service of the above notice, the landlord and the landlord's witness both testified during the hearing that the aroma of marijuana in the open hallway and the stairs leading to the tenant's rental suite was very noticeable and the closer they got to the tenant's apartment, the stronger the odor became. The landlord and witness testified that the smell got even stronger when the tenant opened the door to receive the notice, at which point it was very clear that the smell was coming from inside the tenant's rental suite. The landlord also testified that she could also hear sounds of a baby crying.

However, the issues with the tenant continued and the neighbours continued to complain about the tenant. As a result, the landlord issued the tenant with a One Month notice to End Tenancy for Cause by serving it to the tenant personally on October 31 with the building manager. The notice was provided as evidence by both parties and shows an expected date of vacancy of November 30, 2013 and states three reasons for ending the tenancy as follows:

- The tenant has allowed an unreasonable number of occupants in the unit.
- The tenant or a person permitted onto the property by the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord.

- The tenant has engaged in an illegal activity that has, or is likely to adversely affect the quiet enjoyment, security and safety or physical wellbeing of another occupant or the landlord.

The tenant made the application to dispute the notice on November 12, 2013 and the landlord provided the following evidence to support the reasons selected on the notice to end tenancy.

- A statement from the tenant's adjacent neighbour stating that the noise coming from the tenant's unit from the children inside is affecting her lifestyle and making it impossible to sleep at night and take afternoon naps. The neighbour goes on to state that she cannot leave her suite without the odor of marijuana affecting her and that the tenant is affecting the living conditions of all the people around her without remorse in an otherwise quiet and peaceful seniors complex.
- A statement from the building manager who states that she had seen the tenant with a child and that the tenant had told her she was babysitting the child until October, 2013. The statement goes on to state that she had seen the tenant's family moving out. The building manager was also the witness with the landlord when the tenant was served the notice to end tenancy and in the building manager's statement she makes mention of the over-powering smell of pot she noticed coming from the tenant's rental suite, when it was served.
- A statement from a care worker for the tenant's neighbour stating that she had observed the tenant on her balcony smoking pot and having children in her rental suite with her. The care worker goes on to state that the smell of marijuana coming from her apartment was so strong that she felt ill and compelled to call the police for fear of the children's welfare in the tenant's apartment. As a result, the care worker called the RCMP to lodge a complaint about the noise and drugs. The RCMP advised the care worker over the phone to start up the process of eviction. The landlord provided a police file reference number for this incident.
- A statement from another neighbour of the tenant, residing below, regarding the noise levels. The neighbour states that the tenant bangs on the walls at night and the smoking of marijuana is a major problem as she had to keep her windows and door closed all summer in the hopes of avoiding the smell. The neighbour goes on to state that the smell of marijuana in the rental suite is so strong that it comes into her unit from her closet, as her closet walls abut the walls of the tenant's rental suite and that the odor makes her sick and adversely affects her life.

The landlord testified that they have tried to talk to the tenant about these issues, even giving her a written breach letter and an opportunity to rectify the matters. However, the tenant denies the issues but continues to engage in these activities that are affecting the other residents.

The tenant testified that her son was living in Kamloops and she had rent receipts for her son's tenancy to prove this. However, these were not provided as evidence for the hearing. The tenant testified that her husband had recently died and that she had several members of the family coming over to assist her in cleaning the apartment, making supper and doing the dishes. The tenant denied that her family members were occupants in the rental suite and maintained that they were still guests.

The tenant stated that she only babysat on a small number of occasions and that her granddaughter did stay with her for two months but only in the capacity of a guest.

In relation to the smoking of marijuana, the tenant testified that she has medical permission to smoke marijuana and provided evidence of the place she purchases the marijuana. The tenant testified that she had smoked this once on her balcony when her neighbour's windows were open which caused the neighbour some discomfort. However, the tenant apologised for this and this was the only occasion. The tenant denied there being a strong marijuana smell in the rental suite testifying that the smell was probably coming from her person. However, the tenant did admit that she cooks the marijuana in her suite by steeping it in the form of a tea or cooking it in a stir-fry. The tenant stated that she is not the only person in the building that smokes marijuana and that she regularly got up in the early hours of the morning to start her day which was what probably created the noise claimed by the neighbours.

The tenant's advocate questioned the dates of the statements provided as evidence in relation to the family members apparently residing in the tenant's suite and that the dates were inconsistent with the landlord's verbal testimony.

### Analysis

Section 47(4) of the Act states that a tenant may dispute a 1 Month Notice to End Tenancy for Cause by making an Application for Dispute Resolution within 10 days after the date the tenant receives it. The tenant confirmed that the notice was received by her on October 31, 2013, therefore the tenant had until November 10, 2013 to make the application to dispute the notice. However, since this date fell on a statutory holiday weekend, pursuant to Section 25(3) of the *Interpretation Act*, I find that the tenant was allowed the next business day to make the application, extending the allowable time limit to November 12, 2013. As the application to dispute the notice was made on

November 12, 2013, I find that the tenant made the application within the time limit afforded to her under the Act.

I have examined the notice to end tenancy and I also find that contents and service of the notice to the tenant, complied with the requirements of the Act.

In relation to the reason selected by the landlord on the notice to end tenancy about an illegal activity that has significantly interfered with or unreasonably disturbed another occupant or landlord, the landlord stated that they don't have an issue with the tenant smoking pot but that this is not to be done inside the rental suite as the apartment is a no smoking unit. The reason on the notice specifically refers to an illegal activity that the tenant has engaged in that led to the interference and disturbance. The tenant provided documentary evidence to support her legal use of marijuana and therefore, I find the landlord has not provided me with sufficient evidence to suggest that the tenant had specifically engaged in an illegal activity for me to uphold the notice for this reason.

In relation to the second reason on the notice to end tenancy - having an unreasonable amount of occupants in the rental suite, I find that both parties provided evidence that show that there are no longer any other occupants residing in the apartment. The building manager states in her statement that she saw the tenant's family move out and when questioned, the landlord was unable to verify whether this reason on the notice to end tenancy was still valid. A tenant cannot be stopped from having guests or visitors to the rental suite and a landlord needs to be able to prove on the balance of probabilities that the tenant's guests have essentially become occupants. In this case, the tenant has satisfied me that her family are visiting as guests and the notice cannot be upheld for this reason.

However, if the tenant allows guests into her rental suite or engages in an illegal or legal activity, the Arbitrator must analyse the impact that activity or the guests are having on the tenancy, the landlord or other occupants. Therefore in relation to the landlord's reason on the notice to end tenancy that the tenant has significantly interfered or unreasonably disturbed another occupant or the landlord, I find that the landlord has met the burden of proof on the balance of probabilities for this reason.

This is based on the fact that the landlord provided statements from two of the tenant's neighbours who both testified that the smell of marijuana coming from the tenant's rental suite into other resident's rental suites and the communal areas is affecting their right to peaceful and quiet enjoyment. The landlord also testified of her own personal experience of the marijuana smell coming from the tenant's apartment and confirmed the evidence from the tenant's neighbours and a care worker that the marijuana odor is

of an unacceptable level and that the tenant has not made any efforts to curtail this activity despite being given a formal breach letter.

Based on the collective evidence provided by the landlord, I do not accept the tenant's evidence that the marijuana smoke comes from her person and that the odor is attributable to other residents smoking marijuana, as the tenant provided no evidence of this.

I find that there is sufficient evidence before me to suggest that the source of the marijuana smell coming from the tenant's rental suite is from her smoking it inside the rental suite for which she is prohibited from doing due to it being a non-smoking apartment, or it is coming from cooking the marijuana.

Therefore, I find that the tenant has significantly and unreasonably disturbed and interfered with other occupants in the building through the odor created by the tenant's use of marijuana in her rental suite and I uphold the One Month Notice to End Tenancy for Cause dated October 31, 2013 issued by the landlord to the tenant.

#### Conclusion

For the reasons set out above, I dismiss the tenant's application without leave to re-apply and the tenant must vacate the rental suite in accordance with the notice to end tenancy. The landlord made no other request of me during the hearing.

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: January 08, 2014

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Residential Tenancy Branch

