



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding Cascadia Apartment Rental Ltd.  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      CNC

### Introduction

This hearing dealt with an application by the tenant for an order setting aside a 1 Month Notice to End Tenancy for Cause. Both parties appeared and had an opportunity to be heard.

### Issue(s) to be Decided

Does the landlord have cause within the meaning of the *Residential Tenancy Act* for ending this tenancy?

### Background and Evidence

The tenant has lived in this rental unit since November 2009; first as a roommate and then from December 2012 as the sole tenant. The parties said there is a written tenancy agreement, but a copy was not filed. The parties agree that the monthly rent, which is due on the first day of the month, is currently \$1276.00. They also agree that the tenancy agreement does not prohibit smoking.

The landlord is a very large commercial landlord with, according to one of its' witnesses, over 60 buildings in its' portfolio and over 400 employees.

On January 27, 2014 the resident manager and the portfolio manager went to the rental unit to conduct an inspection. The tenant had received written notice in advance of the inspection. When the landlord's employees went into the unit there were several persons, there all smoking marijuana. Some of the tenant's guests were not very polite. The tenant said to the landlord's staff that he had forgotten about the inspection. He also told them that he had a certificate that legally entitled him to possess cannabis for medical purposes.

On January 31, 2014, on the instruction of the portfolio manager, the resident manager wrote the tenant asking him to provide proof that he was legally entitled to possess marijuana and reminding him that he does not have the right to disturb other tenants

with the smell. The letter concluded: "As we would like to continue your tenancy, if the situation is not rectified we will have no choice but to serve you with a 30 day notice for breaking a material term of your tenancy agreement and not correcting it after given written notice from the landlord."

The tenant testified that he never received this letter but he did have a conversation on the topic with the resident manager. AS a result of the conversation he provided the resident manager with a copy of a certificate from Health Canada entitled "Authorization or Possess Dried Marijuana for Medical Purposes". The certificate says that the expiry date is March 31, 2014 and the validity date is July 31, 2014.

The resident manager testified that she finds dealing with the tenant very difficult as he is condescending and confrontational. She was very clear that the tenant has never threatened her. He has reduced her to tears on more than one occasion. On one of those occasions – June 13, 2014 – the landlord's Occupational Health and Safety Manager (hereafter referred to as OHS manager) was with her when she received a telephone call from the tenant. The OHS manager testified that he could hear the tenant yelling at the resident manager over the telephone and at the end of the call she was crying and shaking. The OHS manager instructed the resident manager to write the tenant a letter advising him that such behaviour would not be tolerated. The resident manager testified that she never sent the letter because she did not want another confrontation with the tenant.

The portfolio manager testified that they conduct routine inspections of the rental unit about every three months. She said that on one of these inspections the smell of marijuana was too strong for her and she raised the issue with the OHS manager. There is no record of any communication being sent to the tenant.

On October 23, 2014 one of the maintenance people wrote the resident manager a letter:

"At 9:00 am this morning I began repairs to the unit installing moulding around the base of the apartment as I was working there the tenant was very confrontational saying that all of we maintenance were incompetent and in a not so round way that we were below average intelligence.

Also, after about 15 min. of my working in the suite I noticed a very strong odor of marijuana, upon seeing the tenant smoking a marijuana cigarette.

As I did want the smoke to adversely affect my health, so I left.

I just wanted you to know my reason for not completing the repairs today.,

And in future could you please ask the tenant to refrain from smoking marijuana for at least 24 hrs. if I am to be doing any repairs in his suite.

I hope this will not inconvenience you, however my health and well being could be put in jeopardy from the smoke.”

The OHS manager testified that in addition to his responsibilities to the landlord’s staff, as a licenced building inspector and licenced mold inspector he is also responsible for maintaining the quality of the landlord’s buildings.

The OHS manager testified that he has two legal obligations. One is to ensure that the buildings are properly maintained, which is achieved by regular inspections and performing maintenance as required. The second is to ensure that they protect their employees from unsafe conditions, including violence in the workplace and second-hand smoke.

He testified that he has received written and sworn statements from all five of the on-site staff as well as from three of the rotational workers who go to this building that they feel that this tenant threatens their personal safety. As a result he has issued a standing order that no staff person is to have contact with the tenant without prior approval from the tenant. Copies of the statements and the standing order were not filed in evidence.

The OHS manager referred to – very rapidly and without providing copies of the legislation or case law referred to – WorkSafe BC’s definition of violence, a Supreme Court case, the *Tobacco Control Act*, the *Occupational Health and Safety Regulation*, and *Bill C-13* and said the landlord was relying on this legislation.

He pointed out that if staff refuse to enter the unit the landlord cannot fulfill its’ obligations for maintenance and safety, including the regular inspection of smoke detectors.

Over the years there have been ongoing issues about repairs to the rental unit, some of which were required as a result of two different ceiling leaks.

The tenant complained to the local municipality and the City Inspector scheduled an inspection for November 25. Notice of the inspection was provided to the tenant on November 24.

On November 25 the tenant was at home and a friend was sleeping on the couch. The resident manager, the portfolio manager, the OHS manager, the maintenance man (the same person who wrote the letter of October 23), all accompanied the building inspector. The tenant was taken aback at the number of people present for the inspection. He mentioned that the OHS inspector is 6'4" or 6'5".

There was a confrontation between the tenant and the OHS manager. The portfolio manager and the OHS manager said the tenant was confrontational with the OHS manager; the tenant said the OHS manager was confrontational with him. The resident manager said the two men had a heated discussion.

As everyone was leaving the portfolio manager took the occasion to speak to the tenant about the smell of marijuana in the unit. The tenant produced his certificate, approached the portfolio manager and yelled that he had a certificate to smoke marijuana. The OHS manager stepped between the two and told the tenant he had no right to treat the landlord's staff in that manner. The landlord's staff then left the rental unit.

At some point the resident manager was instructed to issue and serve the tenant with a 1 month Notice to End Tenancy for Cause. She testified that she held off as long as she could because of the Christmas season. The notice was issued and served on December 31. The tenant filed this application for dispute resolution on January 2, 2015.

The tenant testified that he has been disabled since 2007, as a result of a workplace accident. After some difficulty he is now on a permanent disability pension. He said that he suffers from chronic pain which makes him impatient and angry. The purpose of the medical marijuana is to smooth things out and calm him down. He said he was not aggressive, but assertive; that he has very specific standards for his home; he has rights and he asserts those rights.

The tenant testified that from 2010 until he received the prescription for marijuana he smoked nicotine cigarettes heavily – up to three packs/day. Since he received the prescription for medical marijuana he has quit smoking nicotine cigarettes.

The tenant testified that he has two ionized filtered fans in his living room and he leaves the fan in the bathroom, which is located beside the entrance door of the rental unit, running 24 hours a day. He has asked the landlord to install a better seal around the entrance door but they have failed to do so.

The tenant also stated that the resident manager and the maintenance staff that come to his unit are all smokers.

Finally, he stated that he is agreeable to having the place smoke free when he knows the landlord's staff will be coming.

Although all three of the landlord's witnesses gave rebuttal evidence none contradicted the tenant's statements that many of their staff smoke, that he has two fans in his living room, or that he has asked for a better seal on the door.

The landlord's witnesses did say they had received complaint letters from two residents but because those individuals wanted their complaints to be anonymous they had not filed them. I confirmed that I would not consider anonymous complaints in evidence.

#### Analysis

The landlord seeks to end this tenancy for the following reasons:

- The smell of marijuana in the hallways reduces the quiet enjoyment of the other residents of this building.
- The presence of marijuana smoke in the rental unit poses a threat to the health of the landlord's staff, a risk they are entitled to refuse to expose themselves to.
- The tenant's conduct towards the landlord's staff comes within a definition of violence, also a risk that workers are entitled to refuse to expose themselves to.
- If staff will not enter the tenant's unit the landlord is unable to fulfill its' obligations to maintain the unit and protect the safety of other residents of the building, which is a lawful interest of the landlord.

There was some testimony given as to whether the tenant's certificate from Health Canada is still valid – all of which was second-hand.

The landlord's representatives argued very strenuously that the certificate from Health Canada only allowed the tenant to possess dried marijuana, not to smoke it. That is the same as arguing that a prescription for painkillers only allows the patient to hold the pill, not to swallow it.

The law relating to terminating a tenancy for illegal activity is summarized in *Residential Tenancy Policy Guideline 32: Illegal Activities*.

The *Guideline* points out that the party alleging the illegal activity has the burden of proving that the activity was illegal. Thus the party should be prepared to establish the

illegality by providing the arbitrator and the other party a legible copy of the relevant statute or bylaw.

The *Guideline* goes on to explain:

“In considering whether or not the illegal activity is sufficiently serious to warrant terminating the tenancy, consideration should be given to such matters as the extent of the 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.”

As a result, the test to be applied, whether the tenant has a legal right to use marijuana in his unit or not is the same; has it posed a significant interference with or threat to the health or lawful right (including the right to quiet enjoyment) of another occupant or the landlord?

The landlord’s staff members were in and out of this unit on many occasions in 2014; either working on repairs or conducting routine inspections. In spite of this, there are no written communications from the landlord to the tenant advising him that his conduct towards the staff was of concern and may constitute a reason for ending his tenancy.

Similarly, there is no written communication from the landlord to the tenant advising him that the presence of marijuana smoke in his unit may pose a health risk to the landlord’s staff.

The letter of January 31, 2014, says that smoking marijuana in the unit would be a breach of a material term. However, the tenancy agreement does not include any prohibition against smoking so no term, let alone a material term, of the tenancy agreement was being breached.

After January 31 there is no written communication from the landlord to the tenant advising that the smell of marijuana in the hallway continues to be a problem.

From January 31 onwards, there was no written communication to the tenant about any concerns until he was served with the notice to end tenancy.

The OHS manager testified that he had sworn statements from eight staff member stating that the situation in this rental unit posed a threat to their personal health and/or safety. As those statements were not filed in evidence there is no information as to when those statements were given or the particulars of the complaints.

There was a letter dated October 23 from one of these individuals submitted in evidence. That letter disclosed the following:

- The tenant's comments were insulting and annoying.
- He did not smell marijuana until he had been in the unit for fifteen minutes, when the tenant lit up.
- He is prepared to go back into the suite if the tenant will refrain from smoking for 24 hours before.

The letter does not say that he finds the tenant threatening or intimidating.

Two of the eight individuals testified at the hearing.

In the letter dated December 16, 2014 and provided to the resident manager the portfolio manager stated that every time she conducts monthly suite inspections there is a strong smell of marijuana in the hallway and in the unit. However, in her oral testimony she said these inspections took place about every three months.

In her letter she also says she is afraid of the tenant. However, the only incident that she described which be might be considered as threatening is when the tenant yelled at her in the presence of several other people on November 25.

The landlord's evidence stressed that every person who went to the inspection, including the OHS manager, was there because of their responsibility for maintenance, no other reason. There was no evidence that the portfolio manager had been threatened by the tenant on any previous occasion or that she had asked anyone to come to this inspection with her because of any fear she may have had.

The resident manager also testified. It is clear that she finds interaction with the tenant very distressing and has done her best to minimize those interactions. However, she was very careful to say that he has never threatened her.

Having listened to the tenant for some time in the hearing I would say that he was aggressive, argumentative, condescending and short-tempered. He tried to characterize those traits differently but that that is how he presented himself. I have no

doubt that he has been very unpleasant to the resident manager in the pursuit of his objectives.

In conclusion the evidence presented to me only establishes that the tenant is very unpleasant to deal with but does not establish that his behaviour meets the standard of "seriously interfering with or unreasonably disturbing another occupant or the landlord". However, the tenant is advised to moderate his approach if he does not want this issue to arise again.

As set out previously, smoking a marijuana cigarette in the unit does not contravene any clause of the tenancy agreement nor is it sufficient grounds upon which to end a tenancy. However, marijuana smoke is very pungent and many people have strong reactions to it. The tenant has an obligation to ensure that his neighbours, the landlord's employees, and any tradespeople, are not bothered by the smoke or its' smell.

The tenant expressed his desire to comply with his obligations. Although the landlord's evidence did not meet the standard required to end a tenancy on this ground the tenant is reminded that this is an ongoing obligation.

### Conclusion

The tenant's application is granted. The 1 Month Notice to End Tenancy for Cause dated December 31, 2014, is set aside and is of no force or effect. The tenant continues until ended in accordance with the *Residential Tenancy Act*.

The tenant did not pay fee to file this application so no further order is necessary.

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 28, 2015

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Residential Tenancy Branch



