



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNC

### Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the Act) for:

- cancellation of the landlord's 1 Month Notice to End Tenancy for Cause (the 1 Month Notice) pursuant to section 47.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another. The landlord confirmed receipt of the tenant's Notice of Hearing Package. On the basis of this evidence, I am satisfied that the landlord was properly served with the dispute resolution package pursuant to section 89 of the Act. Both parties confirmed receipt of one another's documentary evidence. I am satisfied that both parties were duly served with this evidence in accordance with section 88 of the Act.

Both parties confirmed that the landlords had served the tenant with the 1 Month Notice dated July 13, 2015 by posting it to the rental unit door on July 13, 2015. On the basis of this evidence, I am satisfied that the tenant was duly served with the 1 Month Notice pursuant to section 88 of the Act.

During the hearing the landlord, L.M. made an oral request to end the tenancy and obtain an order of possession in the event that the tenant's application was dismissed.

### Issue(s) to be Decided

Is the tenant entitled to an order cancelling the 1 Month Notice?

Are the landlords entitled to an order of possession as a result of a 1 Month Notice?

### Background and Evidence

This tenancy began on May 1, 2012 on a month-to-month basis as shown by the submitted signed tenancy agreement. The monthly rent was \$595.00 and payable on the 1<sup>st</sup> of each month and a security deposit of \$297.50 was paid on April 30, 2012.

Both parties confirmed in their direct evidence that a 1 Month Notice was issued on July 13, 2015 and served in person on the tenant on the same date by the landlord. The 1 Month Notice states an effective end of tenancy date of August 31, 2015 and displays 2 reasons for cause selected.

- Tenant or a person permitted on the property by the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord.
- Breach of a material term of the tenancy agreement that was not corrected within a reasonable amount of time after written notice to do so.

On the landlords' first reason for cause, the landlord, L.M. stated that she received a telephone complaint from another resident that the tenant was witnessed at a local store, "ranting to the cashier about his problem with the landlord...man turned to the resident, recognized him as being from the same building and continued with his rant and tried to engage him about the warning letter he got from the landlords...The resident tried to make it clear he wanted no part of this and said, sounds like the landlords are just doing their job...Tenant #\*\*\* waited for the resident to finish with his transaction and followed him from the line out of the parking lot and to his van." The landlord stated that the resident did not want to be bothered by this tenant at any time and "described the experience as intimidating and troubling". The landlord has submitted a copy of a typed letter from the resident stating, "At this point I ignored him and walked away while he continued to complain to the cashier that he doesn't even smoke dope."

The landlord stated that there is a long history of verbal warnings given to the tenant for smoking marijuana starting from August 2013 to June 2015 based upon the landlord's six incident reports for marijuana smoke traced to the tenant's door. The landlord has also issued a "Breach" letter dated June 4, 2014 warning the tenant that the landlords have received complaints for marijuana odors coming from his door area. The letter also stated that "excessive odor of marijuana that was determined to be emanating directly from your unit. Residents, visitors and a tradesmen reported this annoyance." The Breach letter outlines that the tenant was provided with a copy of the tenancy

agreement in which he was informed that “No Smoking...SUCH AS POT SMOKING” was permitted. The landlord stated that they have tried to work with the tenant, but have received too many complaints to continue the tenancy.

The tenant disputes these claims stating that there is no evidence to support the landlords’ claims that marijuana smoke is originating from his rental unit.

The landlords stated that on numerous occasions the landlords responded to verbal complaints of marijuana odors/smells coming from the tenant’s rental unit door. The landlords stated that they have investigated the complaints and have determined that the marijuana smell is coming from the tenant’s door through a process of elimination. The landlords stated that tenant’s rental unit is in the middle of the building and that there are no outside windows in this area. The landlords gave evidence that they have had access to all of the other units in this hallway for approximately 1 year and were given permission to access these other suites by the occupants in this hallway whenever there was an odor detected and reported. The landlords stated that the tenant is the only occupant who refuses them entry to investigate the odors when he is not home. The landlords also stated in their direct testimony that the tenant has taken up to an hour to respond to their door knocks when they attend to investigate the marijuana odors.

### Analysis

In an application to cancel a 1 Month Notice, the landlord has the onus of proving on a balance of probabilities that at least one of the reasons set out in the notice is met. In this case, the landlord had selected two reasons for cause.

In this case, both parties have confirmed in both their submitted documentary evidence and their direct testimony that the landlords served the tenant with a 1 Month Notice dated July 13, 2015 by posting it to the rental unit door on the same date. The tenant is deemed to have received the 1 Month Notice on July 13, 2015.

Section 47(1)(d)(i) of the Act permits a landlord to terminate a tenancy by issuing a 1 Month Notice in cases where a tenant or person permitted on the residential property by the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property.

The landlords set out that the tenant interfered with or unreasonably disturbed another occupant based upon a “public outburst” at a local store. The landlord stated that the tenant experienced intimidation and a troubled feeling from this incident. However, in

reviewing the landlord's submitted statement from the other occupant, he stated, "At this point I ignored him and walked away while he continued to complain to the cashier that he doesn't even smoke dope."

I find on the landlords' first reason for cause that the landlord has failed to provide sufficient evidence to satisfy me that the tenant has significantly interfered with or unreasonably disturbed another occupant. As well, it is noted that the "public outburst" took place at a local store and not even on the rental property. The letter dated June 6, 2015 by the complainant does not describe any intimidation or details of fear. Both parties confirmed in their evidence that no complaints to the Police were made. The landlord's request for an end of tenancy based upon this reason for cause is dismissed.

Section 47(1) (h) of the Act sets out that a landlord may end a tenancy where the tenant has failed to comply with a material term and the tenant has not corrected the situation within a reasonable time after the landlord gives written notice to do so. In this case, the landlords stated that the tenant was given multiple verbal warnings in regards to odors/smells of marijuana in the hallway outside the rental unit as well as written warnings in a letter dated June 4, 2014 and again in a letter dated May 27, 2015 which resulted in the 1 Month Notice dated July 13, 2015 because of another incident report generated on June 12, 2015 where marijuana odors were detected outside the tenant's rental unit. The tenant disputed the landlords' claims. The landlords rely on the incident reports produced from verbal complaints received from occupants and the landlords' efforts to investigate the source of the marijuana odors.

Although the landlords' evidence is not conclusive, I find on a balance of probabilities that I prefer the evidence of the landlord over that of the tenant. It is more likely than not that the source of marijuana odors are from the tenant's rental unit since the landlords have had access to the surrounding rental units to investigate the marijuana odors and no access to this tenant's rental unit to eliminate it as a likely source. The landlords have provided a series of incident reports that span from August 2013 to the present in which the landlords have outlined their efforts to work with the tenant and investigate the source of the marijuana odors. The tenant's application to cancel the 1 Month Notice is dismissed. The 1 Month Notice is upheld.

Section 55(1) of the Act reads as follows:

**55** (1) *If a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, the director must grant an order of possession of the rental unit to the landlord if, at the time scheduled for the hearing,*

*(a) the landlord makes an oral request for an order of possession, and*

*(b) the director dismisses the tenant's application or upholds the landlord's notice.*

At the hearing, the Landlord L.M. requested an Order of Possession if the tenant's application for cancellation of the Notice to End Tenancy were dismissed. Pursuant to section 55(1) of the Act, the landlords' request for an end to the tenancy is granted. The landlords are granted an order of possession.

### Conclusion

The tenant's application to cancel the 1 Month Notice dated July 13, 2015 is dismissed. The 1 Month Notice is upheld. I grant an Order of Possession to the landlords effective **two days after service of this Order** on the tenant(s). Should the tenant(s) fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

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: August 28, 2015

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Residential Tenancy Branch

