



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding BONVENTURE DEVELOPMENTS INC  
and [tenant name suppressed to protect privacy]

## **DECISION**

### Dispute Codes

For the tenant – CNC, FF

For the landlord OPC, FF, O

### Introduction

This hearing was convened by way of conference call in response to both parties' applications for Dispute Resolution. The tenant applied to cancel a One Month Notice to End Tenancy for Cause and to recover the filing fee from the landlord for the cost of this application. The landlord applied for Order of Possession for Cause; other issues; and to recover the filing fee from the tenant for the cost of this application.

The tenant and landlords attended the conference call hearing, gave sworn testimony and were given the opportunity to cross examine each other on their evidence. The landlords and tenant provided documentary evidence to the Residential Tenancy Branch and to the other party in advance of this hearing. The parties confirmed receipt of evidence. I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

### Issue(s) to be Decided

- Is the tenant entitled to an Order to cancel the One Month Notice to End Tenancy?
- Are the landlords entitled to an Order of Possession?

### Background and Evidence

The parties agreed that this month to month tenancy started on June 01, 2013. Rent for this unit is \$830.00 per month due on the 1<sup>st</sup> of each month. The tenant paid a security deposit of \$425.00 at the start of the tenancy.

The landlords testified that the tenant signed a tenancy agreement and agreed to certain terms one of which was no Cannabis legal or prescribed. The landlord testified that they are very strict in the enforcement of their rules in order to protect all tenants living in the building. When the tenant signed the agreement he assured he landlords that he did not smoke.

Earlier this year the landlord started to receive complaints from other tenants about the smell of marijuana in the common areas particularly the lobby and the elevator. The landlord also found the lobby and elevator had a strong odour of this marijuana. The building has security cameras and the landlord reviewed the tapes after smelling the odour of marijuana and determined that this odour was most noticeable after the tenant entered the lobby or entered or exited the elevator. The landlords also gave the tenant a notice to enter his unit to do the annual fire test. When the tenant's door to his unit was opened the landlord and the contractor doing the test were both overwhelmed by the extremely strong smell of marijuana coming from the tenant's unit.

The landlord testified that a neighbour reported to the landlord that prior to them going into the tenant's unit she could hear the tenant yelling for them to get out of his unit. The landlord referred to a number of complaint letters regarding the odour that appears to emanate from the tenant when he enters the lobby and the odour in the elevator after the tenant has been in there. Four of the other tenants have indicated that they will give notice to end their tenancies if the landlord does not resolve this issue. The landlords testified that it has taken them some time to determine who the odour is coming from but through video evidence and information from other tenants they have determined the odour is from this tenant. While there does not appear to be any physical damage to the tenant's unit or common areas, the landlord knows that if this is allowed to continue the odour will penetrate into the walls, ceiling and carpet in the unit and will cause damage to the unit.

The landlord testified that he approached the tenant and informed him that the landlords were looking for someone using marijuana and asked if he had smelt anything in the lobby or

elevator. The tenant responded that he had not. The landlord was hoping the tenant would be alerted that the landlord was aware of the marijuana usage and would correct this. The situation did get better for a few weeks but started again. The landlord again approached the tenant and asked him outright if he was smoking marijuana but the tenant denied it. The landlord asked him to stop smoking it as other tenants were complaining. The tenants was sent two warning letters concerning the use of marijuana one on October 08 and one on October 21. With each of these letters the tenant scrawled FUCK OFF in black pen and then proceeded to post these on the front doors of the building for everyone to see. Other tenants and passerby were offended by the use of this language.

The landlord testified that they had to call the police on two occasions because the tenant posted his warning letters with offensive wording in public view and because the tenant ripped down a For Rent sign the landlord had also posted for another unit. As the tenant continued to leave this odour every time he entered the lobby or elevator the landlords felt that the tenant had not taken heed of the warning letter and so they then served the tenant with a One Month Notice to End Tenancy. This was served upon the tenant by posting it to his door on October 09. The Notice has an effective date of November 30, 2015 and provided the following reasons to end the tenancy:

*1) the tenant or a person permitted on the residential property by the tenant has engaged in illegal activity that has*

*(i) Damaged the landlords' property*

*2) The tenant has breached a material term of the tenancy agreement which was not corrected within a reasonable time after written notice to do so.*

The landlord testified that the tenant has continued his practise of smoking marijuana and even this morning before the hearing the landlord was at the building clearing snow when he had to enter the lobby he could smell a strong odour of marijuana. The tenant was the only person who had entered and exited the lobby that morning as shown by the security footage. It is clear the tenant will not correct his use of this illegal substance and therefore the landlords seek an Order of Possession. Due to the time of year the landlords are willing to extend the date the tenant can vacate the rental unit to January 31, 2016.

The tenant's Advocate asked the landlords if anyone has come to them with information that they have seen the tenant smoking a cigarette or a joint. The landlords responded no, it would not be possible for anyone to see what the tenant is doing in his unit.

The tenant's Advocate states that he has seen the landlords' photographic evidence showing the tenant leaving the elevator but there is no evidence that there is an odour of marijuana and one of the witness letters only states they think it is a marijuana smell.

The tenant's Advocate asked the tenant if he has smoked marijuana. The tenant responded no he does not. The tenant's Advocate referred to the tenant's sworn statement which contains information that the tenant attends meetings with veterans suffering from PTSD and that these veterans have medical marijuana that greatly benefits them in dealing with their daily struggles. In the meetings the veterans smoke (a fair bit). The tenant stated that he does not smoke tobacco or marijuana. He has serious ailments which prevent him smoking and can breathe about 57 percent capacity. The tenant states he does not store any marijuana in his rental unit. The tenant also states that the smell of marijuana alleged by the landlords could be on his clothes which he deposits into a hamper by the front door after his meetings with the veterans. The smell could also be the smell on his clothing that other tenants have complained about.

The landlord asked the tenant about his testimony saying he goes to these down town meetings, and that these veterans have the same PTSD as the tenant has. Does the tenant hold meetings in his unit? If not how does the smell of marijuana get on the tenant's clothes when he leaves his unit first thing in the morning. The tenant responded that he does not smoke in his unit and it could be a residual smell left on his clothing.

The tenant's Advocate asked the landlord if they solicited the complaint letters from the tenants who wrote them as they all appear to have been written within five days. The landlord responded that other tenants have made verbal complaints and were then asked to put them in writing. Their letters were not solicited. The landlord testified that one of the complainants was sitting in the lobby around 10.00 a.m. one morning with the landlord and his wife when the tenant exited the elevator. That tenant commented about the strong smell of marijuana coming from the tenant. Prior to that the landlord and his wife had just cleaned the lobby and elevator they do every morning and they used strong smelling cleaning products. There was no odour in

the elevator or lobby prior to the tenant coming down. No one else had used the elevator or lobby that morning.

The tenant testified again that he does not smoke and has debilitating asthma. He testified that he is a model tenant and other tenants on his floor love him. He is being punished for something happening outside the building. The tenant seeks an Order to cancel the One Month Notice.

### Analysis

In this matter, the landlords have the burden of proof and must show (on a balance of probabilities) that grounds exist (as set out on the Notice to End Tenancy) to end the tenancy. This means that if the landlords' evidence is contradicted by the tenant, the landlords will generally need to provide additional, corroborating evidence to satisfy the burden of proof.

I have carefully considered all the evidence before me, including the sworn testimony of both parties, with regard to the first reason provided on the Notice to End Tenancy, I find the landlords have not shown that any actual damage has been done to the rental unit by the tenant through an illegal activity; although I do accept that when there is an odour such as marijuana in a unit this will penetrate into the drywall and carpeting which could result in the landlords having to repaint the unit and possibly clean or replace the carpets. However, the landlords must show on a balance of probabilities that the tenant is smoking inside his unit and this odour is not coming off the tenant's clothing. Having reviewed the landlords' testimony and the complaints from other tenants I find the landlord and the contractor attending to do the fire test are the only ones who have entered the tenant's unit. The complaint letters refer to the odour in the lobby and elevator after the tenant has passed through. The tenant's testimony that his clothes may contain an odour after being at the meetings with other veterans is just as probable.

The fact remains that the landlord and his contractor were both overwhelmed by the smell of marijuana coming from inside the tenant's unit. Further to this I find it unlikely that the tenant's clothes would still have such a strong odour of marijuana after they have been placed in a hamper all night or that the same clothes were taken from the hamper and worn the next day, yet the tenant still smelt strongly of marijuana when he entered the elevator and lobby in the

morning. I find therefore on a balance of possibilities that it is highly likely the tenant is smoking marijuana inside his unit.

With regard to the second reason provided on the Notice, the tenant was given the first warning letter on October 08, 2015 and as this was posted to the tenant's door it was not deemed to have been served until three days later on October 12, 2015; however, the landlord then served the tenant with the One Month Notice on October 09, 2015. The Notice indicated that the tenant has breached a material term of a tenancy agreement that was not corrected within a reasonable time after written notice to do so.

It is my opinion that the landlord did not give the tenant reasonable time between serving the first warning letter and serving the Notice to correct his behavior regarding the marijuana; however, even after the tenant did receive the Notice the tenant continued to enter and leave the building emanating a strong smell of marijuana which on a balance of probabilities allows me to consider that the tenant had no intention of complying with the warning letters issued on October 08 and October 21 after the Notice had been served.

Consequently it is my decision that the tenant has engaged in an illegal activity that is likely to damage the landlords' property and as such I find the landlord is entitled to an Order of Possession.

As the landlords' application has merit I find the landlords are entitled to recover the filing fee of **\$50.00** from the tenant pursuant to s. 72(1) of the *Act*.

### Conclusion

The landlords have been issued an Order of Possession effective **on January 31, 2016** pursuant to section 55(1) of the *Act*. This Order must be served on the tenant. If the tenant remains in Possession of the rental unit and does not relinquish that possession to the landlords then the Order may be filed in the Supreme Court of British Columbia and enforced as an Order of that Court.

As I have found that the landlords are entitled to be reimbursed for the **\$50.00** cost of filing this application. I Order that the landlords retain this amount from the security deposit of \$425.83

leaving a balance \$375.00 which must be returned to the tenant or otherwise dealt with in compliance with section 38 of the *Act*.

The tenant's 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: December 18, 2015

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Residential Tenancy Branch

