



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNC, FF

### Introduction

This hearing dealt with the tenants' 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;
- authorization to recover their filing fee for this application from the landlord pursuant to section 72.

Both parties attended the hearing via conference call and provided affirmed testimony. Both parties confirmed receipt of the notice of hearing package and the submitted documentary evidence of the other party. As both parties have confirmed receipt of the notice of hearing package and the submitted documentary evidence, I am satisfied that both parties have been properly served as per sections 88 and 89 of the Act.

### Issue(s) to be Decided

Are the tenants entitled to an order cancelling the 1 Month Notice?  
Are the tenants entitled to a monetary order for recovery of the filing fee?

### Background and Evidence

While I have turned my mind to all the documentary evidence, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of the applicant's claim and my findings are set out below.

This tenancy began on June 15, 2013 on a month-to-month basis as shown by the submitted copy of the signed tenancy agreement dated June 15, 2013. The monthly

rent is \$1,200.00 payable on the 1<sup>st</sup> day of each month and a security deposit of \$600.00 was paid.

Both parties agreed that the landlord served the tenants with two 1 Month Notice(s) dated July 22, 2016 and August 8, 2016 via Canada Post Registered Mail.

The first 1 Month Notice sets out an effective end of tenancy date of August 31, 2016 and that it was being given as:

- the tenant or person permitted on the property by the tenant has:
  - significantly interfered with or unreasonably disturbed another occupant or the landlord;
  - put the landlord's property at significant risk; or
- Breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.
- the tenant knowingly gave false information to prospective tenant or purchaser of the rental unit/site or property/park.

The landlord provided affirmed testimony stating that following an incident where the police were called the landlord received a verbal complaint of being disturbed by the tenants' actions. The landlord also stated that the tenant had been storing propane tanks against the property which put the landlord's property at risk as it is considered unsafe storage. The landlord stated that after being notified to remove the items, the tenants had complied and that there were no further issues. The landlord stated that the tenant, J.A. has been repeatedly seen smoking on the patio and on the residential property which is contrary to a material term of the tenancy. The landlord stated that this was a non-smoking building. The landlord also stated that after showing another rental unit to a prospective tenant, the tenant stated that he liked the unit, but would not be taking it because of the tenants.

The tenants disputed the claims of the landlord stating that the propane tanks were removed even though they were empty and that there were no further issues with them. The tenants also stated that they had the verbal permission of the landlord to smoke on the rental property.

The landlord disputed the tenants claim stating that no permission to smoke on the rental property was given. The tenants were unable to provide any supporting evidence that verbal permission was given by the landlord to smoke on the property.

The second 1 Month Notice sets out an effective end of tenancy date of September 30, 2016 and that is was being given as:

- the tenant or 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 time after written notice to do so.

The landlord stated that the reasons for the second 1 Month Notice were the same as the first due to continuing actions of the tenants. The landlord stated that the tenants continued to smoke on the rental property and was seen by the landlord smoking on the patio. The tenants disputed this claim stating that smoking was now only carried out off of the property.

### 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.

I accept the evidence of both parties and find that the landlord has properly served the tenants with both of the 1 Month Notice(s) via Canada Post Registered Mail as confirmed by the tenants.

I find on a balance of probabilities that I prefer the evidence of the landlord over that of that tenants. It is clear that there is a term of the tenancy which prohibits smoking which states,

*No smoking of any combustible material is permitted on the residential property, including within the rental unit.*

Both tenants acknowledged that they have smoked in the rental unit over the 3 year period of the tenancy agreement. The tenants claim that verbal permission was granted by the landlord to smoke on the property. The landlord has disputed that any permission was given to smoke on the rental property as he considers this a material term of the tenancy agreement which was signed by both parties. In this case, I find that the tenants have failed to provide sufficient evidence to satisfy me that verbal permission was given by the landlord to smoke on the rental property. As such, I find that the tenants breached a material term of the tenancy agreement as claimed by the landlord by smoking on or in the rental property.

The landlord has established one of the reasons set out in both of the 1 Month Notice(s). The tenants' application to cancel the two 1 Month Notice(s) are dismissed.

I find that the landlord has properly served the tenants with both of the 1 Month Notice(s). Pursuant to section 55 (4) the landlord is granted an order of possession.

### Conclusion

The landlord is granted an order of possession.

This order must be served upon the tenants. Should the tenants fail to comply with the order, the order may be filed in the Supreme Court of British Columbia and enforced as an order of that Court.

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: September 21, 2016

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Residential Tenancy Branch