



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes: CNC LRE FF O

### Introduction

The tenant submitted an Application for Dispute Resolution (the “Application”) under the *Residential Tenancy Act* (the “Act”) to cancel a 1 Month Notice to End Tenancy for Cause dated April 27, 2017, the (“1 Month Notice”), for an order suspending or setting limits on the landlord’s right to enter the rental unit, for the recovery of the cost of the filing fee, and other unspecified relief.

The tenant, the landlord, an advocate for the landlord and a witness for the landlord attended the teleconference hearing. At the start of the hearing I introduced myself and the participants. The parties were provided with the opportunity to submit documentary evidence prior to this hearing, all of which has been reviewed, to present affirmed oral testimony evidence and to make submissions to me.

Neither party raised any concerns regarding the service of documentary evidence.

### Preliminary and Procedural Matter

During the hearing, the landlord stated that should the tenant’s Application be dismissed and the 1 Month Notice be upheld, that the landlord was not requesting a 2 day order of possession and would provide the tenant until June 24, 2017 at 11:00 a.m. I then clarified for the landlord that as the *Act* speaks to 1:00 p.m. that I would consider her request to mean June 24, 2017 at 1:00 p.m. which the landlord agreed with during the hearing.

### Issues to be Decided

- Should the 1 Month Notice to End Tenancy for Cause be cancelled?
- If the 1 Month Notice is cancelled, should the landlord’s right to enter the rental unit be suspended or have limits set on the landlord under the *Act*?

### Background and Evidence

A fixed term tenancy began on March 1, 2017 and requires vacant possession of the rental unit on August 31, 2017. A copy of the tenancy agreement was submitted in evidence. Monthly rent of \$1,600.00 is due on the first day of each month.

The tenant confirmed that he was served with the 1 Month Notice on April 27, 2017 and disputed the 1 Month Notice on May 5, 2017 which is within the 10 day timeline provided under the *Act*. The landlord listed three causes on the 1 Month Notice, namely:

1. The tenant or a person permitted on the property by the tenant has seriously jeopardized the health or safety or lawful right of another occupant or the landlord.
2. The tenant or a person permitted on the property by the tenant has engaged in illegal activity that has, or is likely to adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant.
3. 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 testified that the tenant smoke marijuana in his rental unit and that on April 26, 2017, when the landlord was walking by she could smell the smell of marijuana so she knocked on the door. The landlord testified that the tenant answered and invited her inside to smell for marijuana and claimed there was no smell. The landlord testified that she could overwhelming smell the smell of marijuana and completely disagreed with the tenant's claim that there was no smell of marijuana. The landlord stated that suddenly the tenant's daughter stormed into the living room screaming:

"GET THE FUCK OUT OF HERE YOU BITCH! I WILL KILL YOU! GET THE  
FUCK OUT OF HERE BITCH AND RIGHT NOW!"

[Reproduced as written]

The tenant claims that his daughter did not threaten to kill the landlord and that she did say the first part as claimed by the landlord but then said "quit harassing my Dad or you will kill him." The landlord disputed the tenant's version of what his daughter yelled at the landlord.

The tenant testified that neither he nor his guests continue to smoke in the rental unit. There is no dispute that the tenancy agreement addendum clearly indicates that smoking is not permitted in the rental unit.

The tenant stated that the landlord is welcomed to attend the rental unit at any time to smell for smoke which is contradictory to his Application which includes a request to suspend or set limits on the landlord's right to enter the rental unit. In addition, the tenant's testimony contradicts the landlord's testimony as the tenant said the landlord did not smell any smoke when she entered on April 26, 2017 which the landlord disputed by stating that she clearly smelled marijuana smoke in the rental unit.

The landlord stated that due to the tenant's daughter threatening to kill her, she call the local police department and was given a police file number referenced on the cover page of this decision for ease of reference. The landlord testified that she was advised by the attending police officer to issue a Notice to End Tenancy and cite the police file number and provide her evidence under oath.

### Analysis

Based on the documentary evidence and the testimony provided during the hearing, and on the balance of probabilities, I find the following.

As the tenant disputed the 1 Month Notice within the 10 day timeline provided for under the *Act* the onus of proof then reverts to the landlord to prove that the 1 Month Notice is valid. The landlord is only required to prove one of the listed causes for the 1 Month Notice to be valid.

In the matter before me, I find the landlord's testimony and supporting documentary evidence is consistent and compelling. On the contrary, I find the tenant's testimony to be contradictory and vague. For example, the tenant claims that the landlord is welcome into the rental unit to smell for smoke at any time yet has applied to suspend the landlord's right to enter the rental unit or to set limits on the landlord's right to enter the rental unit. In addition, the tenant claims there was no smell of smoke and that the landlord did not smell smoke which is inconsistent with the landlord's testimony. Furthermore, the tenant claims his daughter did say what is being claimed by the landlord except for the party regarding the threat to kill the landlord. The tenant claims his daughter said that the landlord would kill the tenant if she doesn't stop harassing him.

Given the above, as I prefer the evidence of the landlord over that of the tenant for the reasons indicated above, I dismiss the tenant's Application to cancel the 1 Month Notice as I find the 1 Month Notice is valid and has been supported sufficiently by evidence from the landlord. Therefore, pursuant to section 55 of the *Act*, and taking into account the

landlord's statement that they would agree to June 24, 2017 at 1:00 p.m., I grant the landlord an order of possession effective **June 24, 2017 at 1:00 p.m.**

Based on the above, I do not find it necessary to consider the second and third causes listed on the 1 Month Notice as a result of the above. I also do not find it necessary to consider the remainder of the tenant's Application as it is now moot as the tenancy ended on June 1, 2017 and an order of possession granted effective June 24, 2017 at 1:00 p.m.

### Conclusion

The tenant's Application is dismissed.

The 1 Month Notice issued by the landlord has been upheld and is valid. While the tenancy ended on June 1, 2017, which is the effective date of the 1 Month Notice, the order of possession is granted effective June 24, 2017 at 1:00 p.m. by consent of the landlord. This order must be served on the tenant and may be enforced in the Supreme Court of British Columbia.

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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: June 14, 2017

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Residential Tenancy Branch