



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes

CNC FF

### Introduction

This hearing dealt with an application by the tenant pursuant to the *Residential Tenancy Act* ("the Act") for an order as follows:

- to cancel a 1 Month Notice to End Tenancy given for Cause ("1 Month Notice") pursuant to section 47 *Act*; and
- for a return of the filing fee pursuant to section 72 of the *Act*.

Both the tenant and the landlord appeared at the hearing. The landlord was represented at the hearing by her counsel, O.M. Also joining the landlord were witnesses, A.R. and S.T. All parties present were given a full opportunity to be heard, to present their sworn testimony and to make submissions under oath.

Undisputed testimony was presented by the tenant that he received the landlord's 1 Month Notice to End Tenancy after it was placed in his mailbox on September 10, 2017. Pursuant to section 88 of the *Act*, the tenant is found to have been duly served with the landlord's Notice to End Tenancy.

The landlord acknowledged receipt of the tenant's application for dispute resolution, and both parties acknowledged receipt of one another's evidentiary packages.

### Issue(s) to be Decided

Can the tenant cancel the landlord's Notice to End Tenancy? If not, is the landlord entitled to an Order of Possession?

Can the tenant recover the filing fee from the landlord?

### Background and Evidence

The tenant explained that this tenancy began in March 2014 with rent starting at \$1,000.00 per month. A \$500.00 security deposit collected at the outset of the tenancy continues to be held by the landlord.

This is the third hearing before the *Residential Tenancy Branch* between these parties. All of the previous matters have concerned the tenant's application to dismiss a landlord's 1 Month Notice to End Tenancy ("1 Month Notice"). The first hearing took place in May 2016, with the second taking place in June 2017. In each of these prior hearings, the landlord's 1 Month Notice has been dismissed.

Both the landlord and the tenant explained to the hearing that a 1 Month Notice was posted on the tenant's door on October 10, 2017. The reasons cited on the notice were as follows:

*Tenant or a person permitted on the property by the tenant has –*

- *significantly interfered with or unreasonably disturbed another occupant or the landlord*
- *seriously jeopardized the health or safety or lawful right of another occupant or the landlord*

*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.*

*Breached a material term of the tenancy agreement which was not corrected within a reasonable time after written notice to do so.*

During the hearing, the landlord, and witness S.T. explained that on October 10, 2017, S.T. had returned to her rental premises and had discovered her apartment to reek of marijuana smoke. S.T. described entering her apartment as being "hit by a wall of smoke." S.T. explained that she immediately contacted the landlord regarding her complaint and that the landlord arrived at the property, shortly after being contacted. The landlord stated that she too smelt a very strong smell of marijuana present in S.T.'s apartment, and that this smell had been consistent with the complaints that she had previously received from people occupying the same rental unit. The landlord said, that because of these previous incidents, she immediately issued a 1 Month Notice to tenant M.V.D.

Both tenant S.T. and the landlord, explained that S.T.'s rental unit is situated directly below that of the applicant, M.V.D. Both S.T. and the landlord said that the units share an air duct, and that they both concluded that M.V.D. was smoking in the rental unit while S.T. was away from her unit. S.T. noted that there were no other possible sources of the smoke in her rental unit, as she had closed all windows and doors, prior to leaving her home.

The landlord said that previous tenants in the rental unit occupied by S.T. shared similar experiences with her, and it was for this reason that past 1 Month Notices were issued to M.V.D.

Counsel for the landlord argued that these previous 1 Month Notices, while cancelled during previous arbitrations, should be considered as evidence of a continuous problem faced by occupants of the downstairs rental unit. He also pointed out that M.V.D.'s ex-wife had produced a letter confirming his use of marijuana in the t rental unit. M.V.D. argued that this letter should not be considered, saying that he and his ex are currently engaged in a personal dispute.

The applicant tenant, M.V.D. denied smoking in his rental unit. He argued that he was a non-smoker and attributed the smell of marijuana to nearby residents of the complex whom he had observed smoking marijuana. As part of his evidentiary package, tenant M.V.D. included a copy of an area map depicting nearby residences where he witnessed marijuana being smoked. Tenant M.V.D. explained that he was not present in the rental unit when tenant S.T. returned home and smelled the residual marijuana. He argued the smell could not be attributed to him because he works regularly between the hours of 5 A.M. and 5 P.M.

### Analysis

Tenant M.V.D. has applied for the cancellation of a landlord's 1 Month Notice. He argued that the reasons cited in the 1 Month Notice are unsubstantiated and have little to do with any actions on his behalf. Tenant M.V.D. explained that he could not have been responsible for the smoke present in tenant S.T.'s rental unit because he was at work the entire day that the smoke was reported.

The landlord issued a 1 Month Notice based on the following reasons:

*Tenant or a person permitted on the property by the tenant has –*

- *significantly interfered with or unreasonably disturbed another occupant or the landlord*
- *seriously jeopardized the health or safety or lawful right of another occupant or the landlord*

*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.*

It was submitted to the hearing by the landlord, and tenant S.T., that S.T.'s has been significantly interfered with by M.V.D.'s smoking. After reviewing the June 2017 decision issued by an Arbitrator with the *Residential Tenancy Branch* it is evident that tenant M.V.D. was aware that the landlord had very serious concerns regarding any potential smoking that was occurring in the apartment. I find it difficult to accept tenant M.V.D.'s explanation that he does not smoke in the rental unit, and that he is unsure of how these odors occurred. M.V.D. submitted to the hearing a series of photos and maps from nearby rental units, that he argued were the source of

the marijuana smell. These units may possibly have smokers residing in them, but this does not explain how smoke entered S.T.'s rental unit when all of her windows and doors were closed.

In addition, while previous hearings between the parties have resulted in dismissals of the landlord's 1 Month Notice, I note that nobody has ever claimed the reports of marijuana smoke were unfounded. I accept that M.V.D. was working during the day, but this does not prevent him from creating a disturbance in his rental unit outside of his work hours. I also note and accept the testimony of the landlord and S.T. that the windows and doors to S.T.'s suite were closed, so the only way marijuana smoke could have entered the unit was through the common air duct between S.T. and M.V.D.'s apartments. I therefore find on the balance of probabilities; that is more likely than not, that the tenant M.V.D. has significantly interfered with, or unreasonably disturbed tenant S.T.

The tenant was unsuccessful in cancelling the landlord's 1 Month Notice to End Tenancy, and the landlord will therefore be granted an Order of Possession, effective 2 days after service. The tenant must bear the cost of his own filing fee.

#### Conclusion

The landlord will be given a formal Order of Possession which must be served on the tenant. If the tenant does not vacate the rental unit within the 2 days required, the landlord may enforce this Order in 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: January 10, 2018

---

Residential Tenancy Branch