



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes: CNC OPC

### **Introduction:**

Both parties and witnesses attended the hearing and gave sworn testimony. I find that the Notice to End a Residential Tenancy dated November 22, 2017 to be effective December 31, 2017 was served by posting it on the door on November 22, 2017. The landlord admitted personal service of the tenant's application for dispute resolution. The tenant applies to cancel a Notice to End the Tenancy for cause pursuant to section 47 of the *Residential Tenancy Act* (the Act).

**Issues:** Is the tenant entitled to any relief?

### **Background and Evidence:**

Both parties and four witnesses attended the hearing and were given opportunity to be heard, to provide evidence and to make submissions during the 85 minutes of hearing time. The original tenancy began July 1, 2016. The current subsidized rent is \$510 plus \$75 hydro per month. The tenant paid a security deposit of \$418 which was half of the market rent. The landlord served the Notice to End Tenancy pursuant to section 47 for the following reasons:

- a) The tenant or a person permitted on the property by them:
  - (i) has significantly interfered with or unreasonably disturbed another occupant or the landlord;
  - (ii) has seriously jeopardized the health, safety or lawful right of another occupant or the landlord
- b) The tenant has engaged in illegal activity that adversely affects the quiet enjoyment, security, safety or physical wellbeing of another occupant or the landlord.
- c) The tenant has breached a material term of the tenancy agreement which was not corrected within reasonable time to do so.

The landlord was advised that they bore the burden of proof that there was good cause to end the tenancy. She said that the causes were all based on the tenant's smoking cigarettes and marijuana on the property. She provided evidence that the tenant had signed the crime free addendum forbidding smoking on the property. She said this is a family complex and smoking seriously affects the health and lawful rights of other occupants. Several warning letters dating from 2016 to 2017 are in evidence advising the tenant of this. She said the tenant is a pleasant person but this behaviour is in breach of her agreement and is affecting others. She said the behaviour dates from 2016 and the tenant admitted it in a letter. The tenant said she only admitted she did it once when she was having a panic attack.

The landlord had a letter signed by 3 contractors who are working on the property. It states they have been exposed to marijuana smoke on several occasions while working on the premises of this unit, most recently on November 20, 2017 and have heard what they suspect to be a water pipe or 'bong' while working inside the unit. One of them was invited to testify in the hearing but said his company would not allow that. The tenant's witness said that the marijuana smoke did not come from the tenant's unit but maybe from the nearby street. He and the tenant testified she was allergic to marijuana since a car accident in August 2017 and a drug test was provided to show her blood tested negative to drugs, including marijuana. He said the noise could have been anything but it was not a 'bong'. The landlord pointed out that this was a long term problem prior to August 2017 as evidenced by the warning letters and the drug test was in January 2018.

Board Members testified in the hearing. G.G. said he helped install a smoke detector some time ago in the tenant's unit and smelled marijuana. He said he is a former fire fighter and knows the smell. He also said he saw a doormat outside the tenant's door with cigarette burns and a can of butts. The tenant's witness challenged this observation but G.G. said he definitely saw and smelt this as stated. The tenant said she smokes off the property, sometimes in her car, and the smell may have emanated from her clothing. G.G. said he did not see the tenant smoking on the property.

The maintenance person said he has smelt cigarette and marijuana smoke coming into the unit next door to this tenant. He looks after 60 units and some are occupied by persons who smoke off the property but he does not smell it when he works on their units. He smelt it when installing the smoke alarm in this tenant's unit. The tenant's witness said that if he comes to visit, they go to the road to smoke. He said he does not smoke and his is a canine unit and his dog stays in the car. He can't have his dog anywhere where marijuana is smoked. He said he does not smell smoke in the tenant's

unit. He pointed out that a few units in the complex are 'grandfathered' so maybe the smoke smell emanates from one of them.

The Board Member, D.M., said he saw the tenant smoke outside the complex, not on the property. He said the unit is close to the road but there is not much traffic so he does not believe the smell is emanating from the road. He noted the contractors complained of the marijuana smoke about 3-4 months ago. The landlord said she definitely did not want to end the tenancy unjustly but other tenants are complaining and asking why they have to obey the addendum but this tenant does not. During their walk around inspection on October 22, 2016, the tenant admitted smoking in the unit and she continued. If the tenant's application is unsuccessful, the landlord requests the Order of Possession be effective February 28, 2018 to allow the tenant time to vacate.

**Analysis:**

The Notice to End a Residential Tenancy is based on cause pursuant to section 47 of the Act. The Residential Tenancy Act permits a tenant to apply to have the Notice set aside where the tenant disputes it. There was a significant amount of evidence provided in the hearing and the onus of proof on the balance of probabilities is on the landlord to prove they have good cause to end the tenancy. I have carefully considered all the evidence and I find the landlord has met the onus of proving that the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord, has seriously jeopardized the health, safety or lawful right of another occupant or the landlord and has breached a material term of the tenancy agreement.

Her lease commenced in 2016 and I find the weight of the evidence is that her smoking cigarettes and marijuana was a continual issue of her tenancy. I find she was issued warning letters from October 2016 (when she admitted she was smoking marijuana and said it would stop) until October 10, 2017 when complaints indicated it was continuing. On October 25, 2017, I find another warning letter was issued as contractors who have an office next to the tenant's unit were complaining. A letter dated November 22, 2017 signed by four contractors notes they were exposed to marijuana smoke when working on the tenant's unit and have reported it to management.

While I respect the evidence of her police officer friend, I note he visits the tenant and is not there all the time so the offending behaviour may be occurring when he is not present. I note that while the tenant and witness said she cannot use marijuana since August 2017, the tenant did not dispute that she was using it prior to August 2017 and the Notice to End Tenancy was issued after many warnings dating from 2016. I find the

drug test submitted by the tenant was done in January 2018 which is well after the time of the alleged offending behaviour.

I find the weight of the evidence is in favour of the landlord's evidence that there is good cause to end the tenancy. I note the Board Members and maintenance person absented themselves from the room until time to testify yet their testimony was consistent with the events related by the landlord. I find the tenant has significantly interfered with or unreasonably disturbed other occupants and the landlord, has seriously jeopardized the health, safety or lawful right of other occupants or the landlord and has breached a material term of the tenancy agreement.

I therefore dismiss the tenant's application to cancel the Notice to End the Tenancy. Section 55(1) (a) provides that the arbitrator must grant an order of possession of the rental unit where an arbitrator has dismissed the tenant's application and has upheld the Notice. As a result I grant the landlord an Order for Possession effective February 28, 2018 as requested.

**Conclusion:**

The tenant's application is dismissed. Her filing fee was waived. I grant the landlord an Order for Possession effective February 28, 2018. The tenant must be served with this Order as soon as possible. Should the tenant fail to comply with this Order, the landlord may register the Order with the Supreme Court of British Columbia for enforcement.

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 24, 2018

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Residential Tenancy Branch