



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNC

### Introduction

This matter dealt with an application by the Tenant to cancel a Notice to End Tenancy for Cause.

The Tenant said he served the Landlord with the Application and Notice of Hearing (the “hearing package”) by registered mail on January 21, 2018. Based on the evidence of the Tenant, I find that the Landlord was served with the Tenant’s hearing package as required by s. 89 of the Act and the hearing proceeded with both parties in attendance.

### Issues(s) to be Decided

1. Is the Tenant entitled to an order to cancel the Notice to End Tenancy?

### Background and Evidence

This tenancy started on February 1, 2013 as a 1 year fixed term tenancy and there continued on a month to month basis at the end of the fixed term. Rent is \$950.00 per month payable on the 1<sup>st</sup> day of each month. The Tenant paid a security deposit of \$425.00 on January 23, 2013.

The Landlord said he served the Tenant with a one Month Notice to End Tenancy for Cause dated December 26, 2017 on December 26, 2017 by registered mail. The Landlord provided tracking information in support of the service of the Notice to End Tenancy. The effective vacancy date on the Notice is January 31, 2018. The Landlord said the Tenant is living in the unit and he is requesting an Order of Possession if the Tenant’s application is unsuccessful.

The Landlord continued to say that the Tenant has breached the tenancy agreement by smoking in the rental unit and the Tenant has seriously disturbed other tenants and the Landlord with noise violations. As well the Landlord said the Tenant has jeopardizing the health and safety of other tenants and the Landlord. Further the Landlord said the Tenant or guests of the Tenant have engaged in illegal activities that have put the

property at risk and the Tenant has seriously interfered with other tenants and the Landlord.

The Landlord said the Tenant has caused noise issues on a number of occasions. The Landlord submitted 3 letters dated June 20, 2013, July 15, 2014 and May 15, 2016 indicating the Tenant has disturbed people by excessive noise. The Landlord said the July 15, 2014 and May 15, 2016 letters were a result of complaints to the City bylaws department. The Landlord said he also has spoken to the Tenant on many occasions about the Tenant making too much noise and disturbing the upper tenant and the neighbourhood.

Further the Landlord said the Tenant has left debris in the yard and the rental unit is very messy. The Landlord believes the debris is causing a potential fire risk and is attracting a rodent issue to the rental unit. The Landlord said he has spoken to the Tenant many times about the debris and the warning letters also say the Tenant cannot leave garbage and debris around the yard.

Finally the Landlord said the Tenant is smoking in the rental unit which is a breach of the tenancy agreement. The Landlord continued to say the tenancy agreement has an addendum and clause #9 states there is no smoking in the house. The Landlord said he has smelled the Tenant or the Tenant's guests smoking in the house when he has been at the rental unit. Further he received an email complaint from the upper tenant which says the upper tenant called in a noise complaint because the Tenant and his guests would not keep the noise down and they were smoking indoors. The Landlord included the upper tenant's email and a Breach Letter of warning to the Tenant dated October 28, 2017 telling the Tenant to stop smoking in the unit. The Landlord said the Tenant or his guests smoking in the rental unit is a material breach of the tenancy agreement and is grounds to end the tenancy.

The Tenant said he does not smoke cigarettes or marijuana and he has told his guests not to smoke in the rental unit. The Tenant's Advocate said that the Tenant does not smoke in the unit and he testified that the Tenant tells his guest not to smoke in the rental unit. The Tenant's Advocate said he doesn't know where the smoke complaints are coming from, but maybe the Tenant's guest smoked when the Tenant was out of the unit or maybe the Tenant burnt some food while cooking. Both the Tenant and the Tenant's Advocate said there is no smoking in the rental unit.

The Tenant continued to say the yard does not have a fence so people in the neighbourhood leave garbage and debris in the yard. The Tenant said he does not put garbage in the yard. The Tenant's Advocate said he has been in the Tenant's rental unit and it is messy but the Tenant is not a hoarder and there is room to move around the unit easily.

Further the Tenant said he has a good relationship with the tenant in the upper unit so he is surprised that they complained about noise and smoking in the rental unit. The

Tenant said he does not have late parties and he does not believe he has caused any noise issues. The Tenant's Advocate said the Landlord has not given the Tenant any warning letters by registered mail about noise, smoking or garbage.

The Tenant was asked if he received the warning letters the Landlord said he gave the Tenant in 2013, 2014, 2016, 2017 and 2018. The Tenant said he could not remember but he didn't think he got them.

The Landlord said he delivered the letters in person to the Tenant so the Tenant did get them.

The Tenant said in closing the garbage in the yard is not his, there was a rodent problem in the rental unit when he moved in and he does not allow smoking in the rental unit.

The Tenant's Advocate said in closing the Landlord has to prove the reasons on the Notice to End Tenancy and he does not believe the Landlord has done that. The Advocate said there were no warning letters by registered mail and one email from the tenant in the upper unit does not prove anything. The Advocate said he does not think the Landlord has proven the reason to evict the Tenant.

The Landlord said in closing that he has worked with the Tenant and has had many discussion about the Tenant's behaviour. Further he has written many warning letters and the Tenant has not changed his behaviour. The Landlord said smoking in the rental unit is a breach of a material term of the tenancy agreement and is grounds to end the tenancy.

### Analysis

When a Landlord issues a One Month Notice to End Tenancy for Cause with a number of reasons for issuing the Notice to End Tenancy the Landlord only has to prove one reason to be successful in ending the tenancy.

Section 47 (h) of the Act says that a landlord may end a tenancy if:

(h) the tenant

- (i) has failed to comply with a material term, and
- (ii) has not corrected the situation within a reasonable time after the landlord gives written notice to do so;

I have reviewed the evidence submitted and the testimony give at the hearing and it is apparent that the Landlord gave the Tenant a written Breach Letter for smoking in the rental unit dated October 28, 2017. Further I accept the Landlord's evidence of an email from the tenant in the upper unit dated December 22, 2017 indicating the upper tenant made a complaint about the Tenant making noise and the Tenant "smoking indoors". Further I accept the Landlord's testimony that he has spoken with the Tenant

on many occasions about the Tenant making noise and smoking in the rental unit. Consequently, I find the Tenant has breached clause #9 of the tenancy agreement and the Tenant did not correct the breach after the Landlord issued a written Breach Letter to the Tenant to stop smoking.

A material term of a tenancy agreement is a term that is important enough that if it is not agreed to at the start of a tenancy the tenancy would not be entered into. The clause #9 in the addendum is a material term of the tenancy agreement because the parties would not have entered the tenancy if the Landlord knew the Tenant was going to smoke in the rental unit.

I find the Landlord's evidence supports his claim that the Tenant or the Tenant's guests have smoked in the rental unit and this is a breach of a material term of the tenancy agreement. Consequently, I find the Tenant has not established grounds to be successful in canceling the One Month Notice to End Tenancy for Cause dated January 8, 2018. I dismiss the Tenant's application without leave to reapply.

The Landlord's One Month Notice to End Tenancy for Cause dated January 8, 2018 stands in full effect. I find pursuant to s. 55(2)(b) of the Act that the Landlord is entitled to an Order of Possession to take effect March 31, 2018 after service of it on the Tenant.

### Conclusion

The Tenant's application to cancel the Notice to End Tenancy is dismissed without leave to reapply.

An Order of Possession effective March 31, 2018 has been issued to the Landlord. A copy of the Order must be served on the Tenant in accordance with the Act: the Order of Possession and may be enforced 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: March 08, 2018

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Residential Tenancy Branch