



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes: CNC, OLC, AAT, FFT

### Introduction

The tenants applied under the *Residential Tenancy Act* ("Act") to cancel a 1 Month Notice to End Tenancy for Cause dated January 28, 2018 ("1 Month Notice"), for an order directing the landlords to comply with the Act, regulation or tenancy agreement, for access to the rental unit or property, and to recover the cost of the filing fee.

The tenants, the landlords, and a witness for the landlords LC ("witness") attended the teleconference hearing. At the start of the hearing I introduced myself and the participants. The parties had the dispute resolution process explained to them and 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.

The tenants confirmed receiving the documentary evidence from the landlords and having had the opportunity to review the evidence prior to the hearing. The tenants stated that they were unable to open the USB drive so did not have the opportunity to review any digital evidence. The landlords confirmed that they did not confirm with the tenants prior to the hearing that they could access the digital evidence which is required by the Rules of Procedure. As a result, I have excluded the landlords' digital evidence in its entirety. The landlords confirmed that they were served with the tenants' documentary evidence and that they had the opportunity to review that evidence prior to the hearing.

### Preliminary and Procedural Matters

At the outset of the hearing, the parties agreed that the first name of the male landlord and the last name of the female landlord were not spelled correctly in the tenants' application. Therefore, by consent of the parties, the tenants' application was amended to reflect the correct spelling of the names of both landlords.

The parties provided their email addresses at the outset of the hearing which were confirmed by the undersigned arbitrator. The parties confirmed their understanding that the decision would be emailed to both parties and that any applicable orders would be emailed to the appropriate party.

### Issues to be Decided

- Should the 1 Month Notice to End Tenancy for Cause be cancelled?
- If the tenancy is continuing, address the tenants' application for an order for the landlords to comply with the *Act*, regulation or tenancy agreement and to access the rental unit.
- Are the tenants entitled the recovery of the cost of the filing fee under the *Act*?

### Background and Evidence

A copy of the tenancy agreement was submitted in evidence. A fixed term tenancy began on February 1, 2015 and reverted to a month to month tenancy after January 31, 2016. Monthly rent of \$750.00 is due on the first day of each month according to the tenancy agreement.

The tenants first stated that they were served on January 29, 2018 and later changed their testimony to agree with the landlords that in fact they were served on January 28, 2018 with the 1 Month Notice dated January 28, 2018 alleging three causes. The first cause indicated on the 1 Month Notice is that the tenant or a person permitted on the property by the tenant has put the landlords' property at significant risk. The second cause indicated on the 1 Month Notice is that the tenants have engaged in illegal activity that has or is likely to adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant or the landlord. The third cause indicated on the 1 Month Notice is that the tenants have breached a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so. The tenant disputed the notice on February 2, 2018 which is within 10 days of being served with the 1 Month Notice on January 28, 2018. The effective vacancy date on the 1 Month Notice is listed as March 1, 2018.

The landlords testified that the tenants smoke cigarettes and marijuana in the rental unit. The landlords alleged that the tenancy agreement has a no-smoking condition which both parties eventually confirmed did not exist as there was no addendum to the standard tenancy agreement submitted in evidence. As a result, the landlords were advised that the third ground

was dismissed as the landlords could not support a breach of a material term that was not included as a term of the written tenancy agreement.

Regarding the second cause listed on the 1 Month Notice, the landlords allege that the tenants smoking of cigarettes and marijuana have caused problems for the tenants living upstairs and that there is a family of four including two adults and two young children living above the tenants. During the hearing the tenants confirmed that they have previously grown marijuana on the rental property and that they eventually removed the marijuana plants after being ordered to do so by the landlords. The tenants did not deny smoking in the rental unit. A letter submitted in evidence by the male renter living upstairs ("neighbour") with his partner and two young children indicates that there were several problems with the tenants living below them including the constant smoking, fighting and hearing a person choking a woman downstairs. In addition, the neighbour wrote that one of the tenants were so loud that he could clearly hear that one of them called the other a pedophile which really concerned the neighbour for the safety of his family. At this point in the hearing, the tenants laughed when they heard the word "pedophile" which I found to be inappropriate.

The tenants admitted to only one fight and denied additional yelling and arguments and stated that it was the word of the landlords versus their word. As a result, I made the decision to have the neighbour provide witness testimony. Before the witness was affirmed, both parties were cautioned not to lead or badger the witness and confirmed their understanding of what both meant prior to the witness being called into the teleconference hearing. The neighbour, LC, ("witness") affirmed that he has heard many loud fights between the tenants living below them, that he has heard fighting and abuse and that one of the tenants called the other a pedophile very loudly which greatly concerned him. The witness testified that he regularly smells cigarette and marijuana smoke and that the tenants cover up the smell by cooking bacon if the landlords attend to investigate a complaint.

The landlords had no questions for the witness and the tenants asked the witness "How can you prove anything you said?" and then "Do you stand in the laundry room to listen to us?" and finally "Why are you making things hard for us?" at which point the male tenant was cautioned for badgering the witness and the witness was dismissed.

### Analysis

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

**1 Month Notice to End Tenancy for Cause** – As the tenants deny the three causes listed on the 1 Month Notice and I dismissed the cause related to breach of a material term for the reason indicated above, I will focus on the second ground listed on the 1 Month Notice which relates to illegal activity. Firstly, the tenants confirmed growing marijuana on the rental property which I find satisfies me that illegal activity occurred on the rental property. Secondly, I find that the tenants

are not credible. I have reached this decision as their testimony was inconsistent and improbable. Furthermore, the tenants could not comply with my direction not to badger the witness during the hearing which I find impacts their credibility. The tenants' testimony was inconsistent when they changed the date they were served with the 1 Month Notice during the hearing. I have compared this with the landlords' testimony which was consistent, logical and was consistent with the witness letter and witness testimony. Therefore, I prefer the testimony of the landlord and the landlord's witness over that of the tenants.

Therefore, based on the above, I accept the landlords have met the burden of proof by providing sufficient evidence to support the second cause indicated on the 1 Month Notice which is that the tenants have engaged in illegal activity that has or is likely to adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant or the landlord. The tenants did not deny smoking and growing marijuana in or on the rental property and I am satisfied that the tenants have impacted the physical well-being of the renters living upstairs from the consistent smoking of cigarettes and marijuana. I do not find it necessary to consider whether the tenants assaulted each other or the first cause based on my finding above.

Given the above, I dismiss the tenants' application in full, without leave to reapply. I uphold the landlords' 1 Month Notice. As rent has not been paid in full as of the date of the hearing as rent is due on the first day of each month, I grant the landlords an order of possession effective **two (2) days** after service on the tenants. I find the tenancy ended on March 1, 2018 which is the effective date listed on the 1 Month Notice.

The order of possession was granted in according with section 55 of the *Act* which states:

**Order of possession for the landlord**

**55 (1)** If a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, **the director must grant to the landlord an order of possession of the rental unit if**

- (a) the landlord's notice to end tenancy complies with section 52 [form and content of notice to end tenancy], and**
- (b) the director, during the dispute resolution proceeding, dismisses the tenant's application or upholds the landlord's notice.**

[My emphasis added]

I have reviewed the 1 Month Notice and find that it complies with section 52 of the *Act*.

I do not grant the tenants the recovery of the cost of the filing fee as their application was dismissed in full without leave to reapply.

Conclusion

The tenants' application to cancel the 1 Month Notice is dismissed. I uphold the 1 Month Notice issued by the landlords. The tenancy ended March 1, 2018.

I grant the landlords an order of possession effective two (2) days after service on the tenants. This order must be served on the tenants 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: April 4, 2018

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Residential Tenancy Branch