



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding CMHA KOOTENAYS  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      CNC, OPC, FF

### Introduction

The landlord and the tenant convened this hearing in response to applications.

The landlord's application is seeking orders as follows:

1. For an order of possession; and
2. To recover the cost of filing the application.

The tenant's application is seeking an order as follows:

1. To cancel a One Month Notice to End Tenancy for Cause, (the "Notice") issued on October 15, 2018.

Both parties appeared, gave affirmed testimony, and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions at the hearing.

In a case where a tenant has applied to cancel a notice for cause Residential Tenancy Branch Rules of Procedure require the landlord to provide their evidence submission first, as the landlord has the burden of proving cause sufficient to terminate the tenancy for the reasons given on the notice.

The parties confirmed receipt of all evidence submissions and there were no disputes in relation to review of the evidence submissions.

I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure. I refer only to the relevant facts and issues in this decision.

### Issues to be Decided

Should the Notice be cancelled?  
Is the landlord entitled to an order of possession?

### Background and Evidence

The tenancy began on May 1, 2016. The tenant's portion of rent is determined by BC Housing. A security deposit of \$445.00 was paid by the tenant.

The parties agree that a one month notice to end tenancy for cause was served on the tenant indicating that the tenant is required to vacate the rental unit on November 30, 2018.

The reason stated in the notice to end tenancy was that 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; and
- breached a material term of the tenancy that was not corrected within a reasonable time after written notice to do so.

The landlord's agent testified that the tenant has breached a material term of the tenancy agreement by smoking. The agent stated that the tenant has been given two written warning that they that this is smoke free housing.

The landlord's agent testified that they have been attempting to have the tenant comply with the policy of no smoking; however, their warnings are being ignored.

The landlord's agent testified that in January 2017, they posted a general reminder to all tenants that no smoking is permitted, rather than give a formal warning.

The landlord's agent testified that on March 10, 2017, the tenant had an extra vehicle, which had to be moved. The agent stated that they went to the tenant's unit to ask

them to move the vehicle. The agent stated when they were at the tenant's units there was an overwhelming smell of cannabis smoke. The agent stated that the tenant tried to say the smell was from having gasoline in their rental unit. However, this was not a smell of gasoline.

The landlord's agent testified that in April 17, 2017, they were conducting the annual inspection of the tenant's rental unit. The agent stated at that time there was an overwhelming smell of cannabis smoke.

The landlord's agent testified that on July 31, 2017, they had a discussion with the tenant and their support worker about smoking in the rental unit.

The landlord's agent testified that in September 2017, they were denied access to the tenant's rental unit because they were investigating the heavy smell of cannabis smoke coming from their rental unit.

The landlord's agent testified that on April 3, 2018, the tenant had a guess over and they were smoking cannabis in the unit. The agent stated that they gave the tenant a second and final warning

The landlord's agent testified that they have received multiple complaints from other renters that the tenant is smoking and impacting their tenancies.

The landlord's agent testified that in October 2018, they were conducting a move-out inspection with another renter and at that time there was an intense smell of cannabis smoke coming from the tenant's unit. The agent stated that they asked the tenant what was going on in the rental unit. The agent stated that they asked the tenant if they could come into determine if there was smoking going; however, the tenant refused access.

The landlord's agent testified that they have tried everything to get the tenant to comply with the tenancy agreement; however, those attempts have been ignored. The landlord's agent stated that as a result they served the tenant with the Notice.

Filed in evidence are written warning, letters of complaints.

The tenant testified that they were working a graveyard shift and they would be sleeping that is why they denied the landlord access on the first occasion in 2017.

The tenant testified that the landlord's agent is just putting their big nose in to this by accusing them of smoking cannabis in the rental unit. The tenant stated that they are not smoking in the unit and the landlord is only assuming this because they could smell cannabis on their clothing.

The tenant testified that the teenage kids that live in the building are also making the smell of smoke, when they come into the building. The tenant stated they likely get changed before their parents get home.

The tenant testified that they acknowledged that they did smoke cannabis in their unit on one earlier occasion in their tenancy, which they apologized for this.

The landlord's agent argued that on October 10, 2018, the tenant could have let them in to determine if they were smoking, which was refused. The agent stated that one of the tenant's guests also informed them that they were smoking in the rental unit.

### Analysis

Based on the above, the testimony, and evidence, and on a balance of probabilities, I find as follows:

After considering all of the written and oral submissions submitted at this hearing, I find that the landlord has provided sufficient evidence to show that the tenant has:

- breached a material term of the tenancy that was not corrected within a reasonable time after written notice to do so.

In this case the tenant had been given two (2) written warnings that they must comply with the no smoking policy as written in their tenancy agreement.

I do not accept the evidence of the tenant that this was simply the smell of their clothing, or that the smell is from teenagers walking down the hallway, as the evidence does not support this.

Further, when the landlord attended the tenant's unit on October 10, 2018, as they were investigating the smell of smoke the tenant denied access to their rental unit. I find that if the tenant was not smoking in the rental unit, it would have been easily enough for the

tenant to prove by allowing the landlord's agent access when it was requested. I find it more likely than not that the tenant was smoking in the rental unit, even after they were given two written warnings. Therefore, I find the landlord has proved the Notice.

Based on the above, I dismiss the tenant's application to cancel the Notice. I find the tenancy legally ended on November 30, 2018 and the tenant is overholding the premises.

As the tenancy legally ended on the effective date of the Notice, I find the landlord is entitled to an order of possession, pursuant to section 55 of the Act, effective **two days** after service on the tenant. This order must be served on the tenant and may be filed in the Supreme Court. The **tenant is cautioned** that costs of such enforcement are recoverable from the tenant.

Since the landlord has been successful with their application, I find the landlord is entitled to recover the cost of filing their application from the tenant. Therefore, I grant the landlord a monetary order in the amount of **\$100.00** and the landlord is authorized to deduct that amount from the tenant's' security deposit if full satisfaction of this award.

### Conclusion

The tenant's application to cancel the Notice is dismissed.

The landlord is granted an order of possession. I grant the landlord a monetary order for the cost of filing their application and I authorize the landlord to retain that amount from the tenant's security deposit in full satisfaction of this award.

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: December 05, 2018

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Residential Tenancy Branch