



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNC, MNDCT, OLC

### Introduction

This teleconference hearing was scheduled in response to an application by the Tenant under the *Residential Tenancy Act* (the “Act”) to cancel a One Month Notice to End Tenancy for Cause (the “One Month Notice”), for monetary compensation and for an Order for the Landlords to comply with the *Act*, *Residential Tenancy Regulation* and/or tenancy agreement.

The Tenant and both Landlords were present for the teleconference hearing. The Landlords confirmed receipt of the Notice of Dispute Resolution Proceeding package and a copy of the Tenant’s evidence. The Tenant confirmed receipt of a copy of the Landlords’ evidence.

The parties were affirmed to be truthful in their testimony and were provided with the opportunity to present evidence, make submissions and question the other party.

### Preliminary Matters

As stated by rule 2.3 of the *Rules of Procedure*, claims on an application must be related and unrelated claims may be dismissed. Due to the urgent matter of a dispute over a notice to end tenancy, the hearing proceeded based on this claim only. I exercise my discretion to dismiss the Tenant’s claims for monetary compensation and for an Order for the Landlord to comply, with leave to reapply.

### Issues to be Decided

Should the One Month Notice to End Tenancy for Cause be cancelled?

If the One Month Notice to End Tenancy for Cause is upheld, are the Landlords entitled to an Order of Possession?

### Background and Evidence

While I have considered the relevant documentary evidence and testimony of both parties, not all details of the submissions are reproduced here.

The parties were in agreement as to the details of the tenancy which were also confirmed by the tenancy agreement submitted into evidence. The tenancy began on February 1, 2017. Current monthly rent is \$750.00, due on the first day of each month. A security deposit of \$325.00 was paid at the outset of the tenancy.

The parties were not in agreement as to whether a pet damage deposit had been paid.

The Landlords provided testimony that they served the Tenant with a One Month Notice on January 27, 2019 by posting the notice on the Tenant's door. The One Month Notice was submitted into evidence and states the following as the reasons for the notice:

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

Further details were provided on the One Month Notice as follows:

- *Tenant has been smoking/using cannabis inside her unit. Original contract dated Jan 30<sup>th</sup> 2017 states no smoking in premises. Notice given Oct 1/2018 states for no smoking 10 meters from openings to the home (Implies inside).*
- *Tenant has continued to text landlords at inappropriate hours, disrupting sleep. Notice given Oct 1/2018 asked for all communications to be in letter/email only unless emergency*

(Reproduced as written)

The Landlords provided testimony that in October 2018 they began smelling cannabis smoke one to three times per week coming from the Tenant's rental unit which is a lower level unit in the Landlords' home. The Landlords stated that they obtained witness letters regarding the smell of cannabis smoke and as the smell continued, they served the Tenant with the One Month Notice in January 2019.

The Landlords submitted an undated witness letter which states that the smell of cannabis was noticed in the laundry room near the rental unit on January 19, 2019. Another undated letter states that the smell of cannabis was noticed on January 20, 2019 in the lower level of the Landlords' home near the entrance to the rental unit.

The Landlords stated that when the tenancy began the Tenant agreed to a drug-free home as well as to not smoke inside the rental unit. They submitted the tenancy agreement signed on January 30, 2017 which states that there is no smoking in the premises.

The Landlord also submitted evidence that the Tenant has cannabis on the premises and provided three photos from the Tenant's social media. One photo/post dated October 5, 2018 states that the Tenant made cannabis infused oil. Another photo dated October 8, 2018 shows baked good and contains a post about making cannabis butter. A third photo/post dated January 6, 2019 talks about cannabis oil as well as baked goods.

Although the photos and social media posts indicate that the Tenant was baking with the cannabis, the Landlords stated their belief that she is smoking cannabis in the rental unit due to the smell. The Landlords also noted that they can smell cannabis frequently throughout the week and often for hours at a time.

The Landlords also noted that the Tenant has texted them late at night and although infrequent, this has occurred up to 1:00 am. They submitted a text message dated October 7, 2018 which shows it was sent at 12:10 am, a text message sent on December 22, 2018 which shows it was sent at 12:54 am and a text message dated January 12, 2019 which was sent at 12:15 am.

The Landlords also stated that they can hear the Tenant yelling in her rental unit when on the phone or when outside of the rental unit and that this is disturbing and disruptive.

The Landlord submitted a letter dated February 2019 written by a neighbour stating that in summer of 2018 they observed the Tenant yelling as she was walking up the street

and have also heard the Tenant yelling into the phone outside the door to the rental unit on various occasions.

Another letter dated February 18, 2019 was from another neighbor and states that they have heard the Tenant yelling on the phone outside the door to the rental unit. The letter also notes that the Tenant has been heard using inappropriate language on the phone.

The Landlords submitted a letter to the Tenant dated October 1, 2018 in which they remind the Tenant to smoke outside and away from the doors and windows. The letter also requests that the Tenant keeps noise within the hours of 8:00 am and 8:00 pm and due to argumentative communication between the parties to only communicate through email or in writing from then on.

The Tenant stated that she did agree to smoke cigarettes outside and that she has done so. She also testified that she does not use cannabis and does not smoke or vape inside of the rental unit, including cannabis.

The Tenant responded regarding the photos submitted by the Landlord and noted that the photos were staged for social media posts and that some were not even taken in the rental unit. The Tenant stated that she took one photo at a family member's home when the family member was baking with cannabis. She stated that the photos do not mean she was using cannabis or smoking cannabis in the rental unit.

The Tenant also provided testimony that she burns sage for cleansing and noted that the Landlord may be mistaking the smell of sage for the smell of cannabis.

The Tenant stated that there was a time when she texted the Landlord at night but stated that the Landlord was outside in the car, so the Tenant was aware that she was awake.

The Tenant submitted into evidence a letter dated January 27, 2019 which appears to have been sent with the One Month Notice. The letter states that the Tenant is to cease using cannabis in all manners of consumption and provides a reminder that all communication must be through email or written letter.

The parties were offered the opportunity to discuss a possible settlement agreement but were not able to reach an agreement.

### Analysis

Section 47(4) of the *Act* states that a tenant has 10 days in which to dispute a One Month Notice. As the notice was posted on the Tenant's door on January 27, 2019 and the Tenant applied to dispute the notice on January 31, 2019, I find that she applied within the time provided under the *Act*. Therefore, the matter before me is whether the reasons for the One Month Notice are valid.

As stated in rule 6.6 of the *Residential Tenancy Branch Rules of Procedure*, when a tenant applies to cancel a notice to end tenancy, the onus is on the landlord to prove, on a balance of probabilities, that the reasons for the notice are valid.

The One Month Notice was served to the Tenant pursuant to Sections 47(1)(d)(i) and 1(d)(ii) regarding significant and unreasonable disturbance, as well as Section 47(1)(h) of the *Act* regarding a breach of a material term of the tenancy agreement.

The Landlords provided testimony that the reasons for the notice were regarding the Tenant smoking cannabis in the rental unit against the no-smoking terms of the tenancy agreement. They also testified that the One Month Notice was served to the Tenant due to disturbances caused by texting the Landlord late at night, as well as yelling on the phone outside of the rental unit which can be heard by the Landlords and their family.

As for the late-night texting, and loud phone calls, I do not find that I have sufficient evidence before me to establish that the Tenant is causing a significant or unreasonable disturbance. The Landlord submitted evidence of three text messages sent after midnight, as well as witness statements regarding yelling outside of the rental unit or on the street.

However, the Tenant is cautioned that should such disturbances continue, the Landlord may find cause to serve a new notice to end tenancy, given that the Tenant has been sufficiently warned that the Landlords have asked for communication to be solely through email or writing and have expressed that they do not want to be messaged late at night.

Regarding the cannabis smell, I fail to find sufficient evidence to establish that the Tenant is smoking cannabis in the rental unit. The Landlords submitted photos that indicate that the Tenant may be baking or cooking with cannabis, but this does not establish that the Tenant is smoking cannabis in the rental unit against the tenancy agreement.

As stated in Section 21.1(2) of the *Act*, a tenancy agreement that was signed prior to the legalization of cannabis is deemed to include a term regarding smoking cannabis in the same manner that the tenancy agreement prohibits smoking.

I accept that the parties entered into a tenancy agreement in which the Tenant was prohibited from smoking cigarettes inside the rental unit and therefore find that the Tenant is prohibited from smoking cannabis inside the rental unit as well.

However, although the Landlords submitted two letters stating that a smell of cannabis was noticed in the area around the rental unit on January 19 and January 20, 2019, I do not have sufficient evidence before me to draw a link between a smell of cannabis and the Tenant smoking cannabis in the rental unit.

The Tenant stated that she does not smoke in the rental unit, while the Landlords stated their belief that she does. When parties to a dispute resolution proceeding provide conflicting testimony, it is up to the party with the burden of proof to submit sufficient evidence over and above their testimony to establish their claim. As mentioned, based on the evidence and testimony of both parties, I am not satisfied that the Landlords have proven, on a balance of probabilities, that the Tenant is smoking cannabis inside of the rental unit against the tenancy agreement.

As a result, I find that the One Month Notice is not valid as the Landlord has not established, on a balance of probabilities, that the Tenant has breached a material term of the tenancy agreement, caused significant interference or unreasonable disturbance, or seriously jeopardized the health or safety of the landlord or other occupants.

Therefore, the Tenant was successful with the application to cancel the One Month Notice. The One Month Notice dated January 27, 2019 is cancelled and of no force or effect. This tenancy continues until ended in accordance with the *Act*.

### Conclusion

The One Month Notice dated January 27, 2019 is cancelled and of no force or effect. This tenancy continues until ended in accordance with the *Act*.

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 19, 2019

---

Residential Tenancy Branch