



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding RWO HOLDINGS INC.  
and [tenant name suppressed to protect privacy]

## **DECISION**

**Dispute Codes:** CNC

### **Introduction**

This hearing dealt with an application by the tenants for an order to set aside a notice to end tenancy for cause. Both parties attended this hearing and were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. The tenants attended along with their advocate. The landlord was represented by their agents.

As both parties were in attendance, I confirmed service of documents. The parties confirmed receipt of each other's evidence. I find that the parties were served with evidentiary materials in accordance with sections 88 and 89 of the *Act*.

### **Issue to be Decided**

Does the landlord have grounds to end this tenancy?

### **Background and Evidence**

The tenancy began on June 01, 2017. On June 17, 2019, the landlord served the tenants with a one-month notice to end tenancy for cause. The tenants disputed the notice in a timely manner. The notice to end tenancy alleges that the tenant breached the tenancy agreement which was not corrected within a reasonable time after written notice to do so. The notice describes the breach as the smoking of Marijuana on the patio despite multiple written warnings to cease this activity.

The landlord filed copies of 2 written warnings and 4 caution notes given to the tenant between the period of July 2018 and June 14, 2019. The landlord also filed copies of 4 compliant letters from the other occupants of the apartment building. Two are undated and only one is dated June 02, 2019 which is prior to the date of the notice to end

tenancy. The other letter of complaint is dated June 30, 2019 but describes and incident which took place on June 16, 2019.

The tenant denied smoking marijuana on the patio but agreed that he did so in 2018 but stopped doing so after receiving a warning letter. The tenant stated that he does smoke tobacco on the patio but walks to the designated area to smoke marijuana. The tenant also testified that there are other occupants of the building that smoke marijuana and the smell that the complainant describes could have come from any one of the 62 apartments in the building.

A copy of the tenancy agreement was filed into evidence. A term in the agreement allows for the smoking of tobacco and tobacco products on the patio and balcony.

### **Analysis**

In order to support the notice to end tenancy, the landlord must prove that the tenant breached the tenancy agreement which was not corrected within a reasonable time after written notice to do so.

Based on all the evidence before me, I find that the tenant is permitted to smoke tobacco and tobacco products on the patio/balcony but is not permitted to smoke marijuana on the patio/balcony. In order to prove that the tenant breached the tenancy agreement, the landlord must prove that the tenant smoked Marijuana on the patio and continued to do so after written warnings were served to the tenant.

The landlord relies on the letters of complaint, warning letters and caution notes to support his position that the tenant breached a term of the tenancy agreement. The letters describe the smell of marijuana in the area but do not describe having witnessed the tenant smoke the weed itself. Based on the testimony of the tenant, that there are other marijuana users in the apartment complex, I find that it is reasonable to conclude that the source of the smell of marijuana could possibly be any occupant of the 62 apartments in the building complex.

Based on the above, I find that the landlord has not proven the reason for the notice to end tenancy and therefore I am not satisfied that the actions of the tenant justify bringing this tenancy to an end. Accordingly, I allow the tenants' application and set aside the landlord's notice to end tenancy dated June 17, 2019. As a result, the tenancy shall continue in accordance with its original terms.

The tenants would be wise to refrain from giving the landlord and other occupants of the residential complex, reason to complain. I find it timely to put the tenants on notice that, if such behaviours were to occur again in the future and another notice to end tenancy issued, the record of these events would form part of the landlord's case should it again come before an Arbitrator, for consideration.

### **Conclusion**

The notice to end tenancy is set aside and the tenancy will continue.

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: August 16, 2019

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Residential Tenancy Branch