



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      CNC

### Introduction

This hearing was convened as a result of the Tenant's Application for Dispute Resolution ("Application") under the *Residential Tenancy Act* ("Act") to cancel a One Month Notice to End Tenancy for Cause dated July 30, 2019 ("One Month Notice").

The Tenant and a housing support worker for the Tenant, S.E. ("Support Worker"), and an agent for the Landlord, A.P. ("Agent"), appeared at the teleconference hearing and gave affirmed testimony. I explained the hearing process to the Parties and gave them an opportunity to ask questions about the hearing process. During the hearing the Tenant and the Agent were given the opportunity to provide their evidence orally and respond to the testimony of the other Party. I reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch ("RTB") Rules of Procedure; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Neither Party raised any concerns regarding the service of the Application for Dispute Resolution or the documentary evidence. Both Parties said they had received the Application and/or the documentary evidence from the other Party and had reviewed it prior to the hearing.

### Preliminary and Procedural Matters

The Parties provided their email addresses at the outset of the hearing and confirmed their understanding that the Decision would be emailed to both Parties and any orders sent to the appropriate Party.

The One Month Notice is dated July 30, 2019, with a vacancy effective date of July 31, 2019 - the next day. It also states that it was served on the Tenant in person on June 30, 2019. Pursuant to section 53 of the Act, I find that the effective vacancy date is deemed corrected to August 31, 2019, to be in compliance with the Act.

Issue(s) to be Decided

- Should the One Month Notice be cancelled or confirmed?

Background and Evidence

The Parties agreed that the periodic tenancy began on December 1, 2016, with a monthly rent of \$800.00, due on the first day of each month. The Parties agreed that the Tenant paid a security deposit of \$400.00 and no pet damage deposit. The Parties agreed that the residential property is a single-family dwelling with basement suites, including the rental unit.

In the hearing, the Agent said the Parties' tenancy agreement has an addendum about the rental unit being non-smoking ("Addendum"), which the Tenant signed. The Agent said in the hearing that despite this, there have been times when a really strong smell of cigarette smoke has come into the Landlord's and another tenant's suite from the rental unit. The Agent said that the other tenant and neighbours have complained about the Tenant's smoking.

The Addendum states the following:

Due to the increased risk of fire, increased maintenance costs and the known health risks of exposure to second-hand tobacco smoke:

It is a material term of this tenancy agreement that smoking of any combustible material in the rental unit or on the residential property is prohibited, unless designated areas where smoking is permitted are noted below.

Smoking is permitted within the following area(s) only:

None (✓) OR No smoking inside or around premises of this building.

The Addendum was signed by the Landlord and the Tenant and dated November 30, 2016.

The Landlord submitted a two-page statement with a timeline of dates detailing the times he alleges the Tenant has been smoking in the rental unit. The events detailed include the following:

1. PROBLEM: - June 3<sup>rd</sup>/2017. Our Kids Smelt smoke near [Tenant's] door, which opens into our laundry room. FOLLOW-UP: I made [Tenant] Aware of this & gave him a warning to stop this practice both inside and around our property.
2. PROBLEM: - June 16/2017. I myself smelt cigarette smoke near [Tenant's] side laundry door. FOLLOW-UP: - a) I gave second warning to [Tenant] to stop smoking inside and around our premises and b) I texted [M.S.], Social Worker for [Tenant] for follow-up.
3. PROBLEM: - July 15/2017. I was walking near left side of house near [Tenant's] Exhaust fan vent and I smelt a very strong cigarette smell again. I called my immediate neighbour and my teenage kids who also witnessed. FOLLOW-UP: - I was very upset since he continued to breach main material terms of tenancy TO NEVER SMOKE INSIDE OR AROUND OUR HOUSE. I warned him that I would give a one month notice in order to vacate by August 31<sup>st</sup>/2017. I also sent a notice to [M.S.] as well in this regard.

**July 17/2017, a [telecommunications company] technician comes to do cable troubleshooting inside house. I ask for [Tenant's] permission to let the technician enter his side house. Upon his permission, the tech enters and I found THE COMMON DOOR BETWEEN OUR LAUNDRY ROOM & [TENANT'S] SUITE being masked and taped, and some clothing stuffed under the door. Upon asking him, [Tenant] makes an excuse for this saying it is to stop rodents.**

[reproduced as written; emphasis in original]

This document contained three other events dated up to August 20, 2018.

The Agent said that from time to time the Landlord has warned the Tenant about the need to comply with the Addendum via texts and email to the Tenant and to his Support Worker.

The Landlord submitted a number of text messages between Landlord and Tenant. Some of the texts and complaint letters submitted address the Landlord's allegations of the Tenant smoking near the neighbours' properties, which the Landlord has asked the Tenant to stop doing. The following texts relate to issues within the residential property:

Morning [Tenant]. This is July 15/2017. Around 7:55 AM

I am standing left side of apartment, near exhaust vent of your washroom. I have two neighbours as witnesses with me right now and have confirmed a strong smell of tobacco/cigarette smoke coming out of this particular vent.

Someone is smoking inside your washroom with WR exhaust Fan ON.

Another text from the Landlord's evidence:

Sep 9, 2017, 9:17 AM

Good morning [Tenant]

Kids smell cigarette smoke in laundry near your door  
Just now. ??? Please ask your partner to kindly keep our commitment.

Appreciate your cooperation

One warning letter from the Landlord to the Tenant states the following:

February 11/2019

Hello [Tenant]

I am smelling smoke right now from your basement washroom exhaust vent right now while I am sprinkling salt on concrete patio. Over your kitchen window side vent, it has a strong smell of smoke and I just called my next door neighbour [M.N.] to witness it and he also confirms that someone smoking inside again.

That was not what we agreed upon!! while I rented this place to you it was clearly agreed 'no smoking allowed inside and around property' I can not count how many chances my Wife and I have given you. We are putting our 7 other residents on risk. We are all NON-SMOKERS and has a right to live according to our choosing. Your companion and yourself are doing it over and over again and again and keep denying on our face. I cannot count how many times I have seen you smoking out at curb with your wheel-chair companion and very hard to count how many times you have denied it. I did not know that you were an avid smoker and also would bring in our dwelling another avid smoker, living with you since

early 2017!!!!

My last warning to you!!! Please adhere by the tenancy contractual terms.  
Thanks for your kind attention once again.

Rgds

[Landlord's name, signature and phone number]

[reproduced as written]

The Landlord also submitted the following complaint from another tenant in their residential property:

July 28, 2019

To Whom it May Concern

I ([D.C.]) residing at [residential property] have on neumerous occasions smell smoke comming into my bathroom as we live side by side in the basement suites. Especially on June 26, 2019, at 5 a.m. There is no smoking rules in place in our suites. I texted my landlord [P.] who lives upstairs to us on that day to complain.

[name, signature and date]

[reproduced as written]

In the hearing the Tenant said: "This started about 2½ years ago. I've asked them to come in. They have never smelled smoke. There's an ulterior motive to all this. I don't smoke in there at all. I only smoke about two cigarettes a day. I've never been kicked out of a rental unit for smoking. They have been in my place many, many times and haven't smelled smoke. Once you smoke in a house you can't get rid of the smell.

In the hearing, the Support Worker said that based on his notes, he knows he visited the Tenant on February 8, 2019, and July 11, 2019. He said that he is very sensitive to cigarette smoke and that he detected no indication that the Tenant had been smoking in the rental unit, whatsoever. The Support Worker said: "I would have had a physical reaction. A person doesn't necessarily have to be smoking - I would still have had a reaction if he had been smoking there".

### Analysis

Based on the documentary evidence and the testimony provided during the hearing,

and on the balance of probabilities, I find the following.

The Landlord submitted complaints from neighbours about the Tenant and/or his guest smoking on or near the neighbours' properties. I find that these other properties are beyond the authority or jurisdiction of the Addendum, and demonstrate the Tenant's attempt to comply with the Addendum by smoking away from the residential property. Despite this, the Tenant's evidence primarily consists of denying the Landlord's allegations, although, his Support Worker provided independent evidence to support the Tenant's position.

However, I find that this does not outweigh the Landlord's more extensive evidence of the Tenant smoking in the rental unit and on the residential property, in conflict with the Addendum he signed. Further, this behaviour dates back years, which indicates the Landlord's patience with the Tenant – giving him opportunities to correct his behaviour. Also, the length of time this has gone on diminishes the Tenant's argument that the Landlord served the One Month Notice for ulterior motives.

I have based my Decision on all the evidence before me, overall - the testimony of the Parties, the complaints from another tenant, the letters, texts and warnings given to the Tenant about his and his guest smoking in and near the rental unit. Based on all of this evidence, I find the Landlord has established sufficient cause, pursuant to Section 47 of the Act, to end the tenancy. I find that the Tenant significantly interfered with or unreasonably disturbed other occupants or the Landlord. As a result, the Tenant's Application to cancel the One Month Notice is dismissed without leave to reapply.

I also find that the One Month Notice issued by the Landlord complies with section 52 of the Act. Given the above, and pursuant to section 55 of the Act, I find that the Landlord is entitled to an Order of Possession.

### Conclusion

The Tenant significantly interfered with and unreasonably disturbed the Landlord, another tenant and other occupants of the residential property by repeatedly smoking in and near the rental unit, contrary to the Addendum to the tenancy agreement. As such, I confirm the validity of the One Month Notice and I find that the Landlord is entitled to an order of possession of the rental unit, effective August 31, 2019 at 1:00 p.m.

Should the Tenant fail to comply with this Order, this Order may be filed in the Supreme Court of British Columbia and enforced as an Order of that Court.

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: August 09, 2019

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Residential Tenancy Branch