



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding WESTERN PROPERTY MANGEMENT  
GROUP and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      CNC, MNDCT, RP, LRE, OLC

### Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the "Act") for:

- cancellation of the landlord's 1 Month Notice to End Tenancy for Cause (the 1 Month Notice) pursuant to section 47;
- a monetary order for compensation for damage or loss under the Act, regulation or tenancy agreement pursuant to section 67;
- an order requiring the landlord to comply with the Act, regulation or tenancy agreement pursuant to section 62;
- an order to the landlord to make repairs to the rental unit pursuant to section 32;
- an order to suspend or set conditions on the landlord's right to enter the rental unit pursuant to section 70.

Both parties attended the hearing via conference call and provided affirmed testimony. The tenant stated that he served the landlord with the notice of hearing package and the submitted documentary via Canada Post Registered Mail on August 24, 2020. The landlord disputes this claim stating at no time has the landlord been served with either the hearing package or the submitted documentary evidence. The landlord stated that in the course of their duties as agents, they received an email from the Residential Tenancy Branch cautioning them of a evidence submission deadline. The tenant provided the Canada Post Receipt Tracking Number. Both parties consented to the landlord reviewing this evidence as the tenant was having issues providing the particulars. A review of the Canada Post website using the Tracking Number provided by the tenant shows that this package was not served to the recipient and was successfully returned to the sender. The details from the Canada Post website state that the "address was not complete". A further review of the tenant's application in comparison with the landlord's notice of hearing package show that a unit # for the

address was not provided as the noted address is a multi unit building making it undeliverable. On this basis, I find that the landlord was not properly served with the notice of hearing package and the submitted documentary evidence. The tenant stated that he still wished to proceed. The landlord stated that she had no issues in proceeding. The tenant was cautioned that proceeding with the hearing despite not serving the landlord with the notice of hearing package and his submitted documentary evidence was not recommended. The tenant confirmed that he wished to proceed.

Both parties confirmed the landlord served the tenant with the submitted documentary evidence via Canada Post Registered Mail on September 21, 2020.

I accept the undisputed affirmed evidence of both parties and find that as both parties have consented that the hearing may proceed. However, the tenant has failed to serve his documentary evidence to the landlord and find that this is highly prejudicial and unfair to the landlord. On this basis, the tenant's documentary evidence is excluded from consideration in this hearing. The tenant is deemed served with the landlord's documentary evidence as per sections 90 of the Act.

#### Preliminary Issue(s)

At the outset, the tenant's application was clarified. The tenant seeks besides the cancellation of the notice to end tenancy; a monetary claim of \$575.57 for an overpayment of utilities; an order for general repairs; an order to suspend or set conditions on the landlord's right to enter the rental unit. The tenant stated that his selection for an order for the landlord to comply was made in error and as such this could be cancelled from the application. The tenant also clarified that the above additional requests were unrelated to the issue of the notice to end tenancy. On this basis, the tenant's request for a monetary claim (MNDCT), an order for general repairs (RP), an order to suspend or set conditions on the landlords right to enter (LRE) are dismissed with leave to reapply pursuant to Rule 2.3 of the Rules of Procedure. Leave to reapply is not an extension of any applicable limitation period.

The hearing shall proceed on the tenant's request to cancel a notice to end tenancy (CNC).

#### Issue(s) to be Decided

Is the tenant entitled to an order cancelling the 1 month notice?

### Background and Evidence

While I have turned my mind to all the documentary evidence, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of the applicant's claim and my findings are set out below.

Both parties confirmed that the landlord served the tenant on August 20, 2020, with the 1 Month Notice by Registered Mail on August 20, 2020. The 1 Month Notice sets out an effective end of tenancy date of September 30, 2020 and that it was being given as:

- the tenant or person permitted on the property by the tenant has:
  - put the landlord's property at significant risk; or
- the tenant has engaged in illegal activity that has, or is likely to:
  - damage the landlord's property;
  - adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant or the landlord.
  - Jeopardize a lawful right or interest of another occupant or the landlord.
- the tenant has caused extraordinary damage to the unit.
- the tenant has not done required repairs of damage to the unit/site.
- Breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.

The details of cause state:

*We did an inspection on July 15, 2020 and found the yard is severely destroyed with a lot of garbage, damaged holes on walls in house, and marijuana planting in the yard, which is severely against our tenant.*

*We sent a notice by email to tenant (M.I.) and gave him 3 weeks to remove marijuana, garbage and repair the damage of walls.*

*On Aug. 19, after confirming with tenant (M.I.), we did the check of the status of the house. We found the marijuana in a container in the yard, garbage in yard, and damages in house.*

[reproduced as written]

The landlord clarified that the 7 reasons for cause selected each have their own details. As such, extensive discussions with the landlord regarding reasons #2, #3 and #4 is regarding the tenant planting marijuana in the yard. The landlord was unable to provide any details of what municipal, provincial or federal statute was an "illegal activity" by planting them. On this basis, the landlord's reasons #2-4 are dismissed.

The landlord stated that the 1<sup>st</sup> reason for cause that the tenant has put the landlord's property at significant risk. The landlord stated that the local municipality has fined the landlord on May 13, 2020 for "fire burning in the yard." The landlord repeated that the tenant was growing marijuana in the yard. The landlord submitted a copy of an invoice dated May 13, 2020 which the description states, "Illegal Burning" and that a \$347.00 fine imposed. During the hearing the landlord confirmed that this was one incident and that there were no ongoing issues. The landlord was unable to provide further details of what if any significant risk still exists. On this basis, this reason for cause is dismissed.

The landlord also stated that reason #5, that the tenant or person permitted on the property has caused extraordinary damage to the unit/site or property/park. The landlord stated that there is a lot of garbage in the yard and that the tenant has planted a tree house in the yard. The landlord was unable to refer to any other details. On this basis, without any details of what extraordinary damage is claimed by the landlord, this reason for cause is dismissed.

On the landlord's stated reason #6, Tenant has not done required repairs of damage to the unit/site/property or park. The landlord stated that an inspection of the property was done on July 15, 2020 where the landlord found:

- Living room wall repair basement
- Garbage under bed
- Garbage in yard
- Tree destroyed.

The landlord was unable to provide any further details or evidence in support of these claims on what repairs were requested of the tenant. On this basis, this reason for cause is dismissed.

The landlord's last and 7<sup>th</sup> reason for cause, Breach of a Material Term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so. The landlord stated that the tenant had planted and grew marijuana plants in the yard. The landlord stated that as part of the inspection conducted on July 15, 2020 the tenant was found growing multiple marijuana plants in the yard. The landlord stated that as per section 41 of the signed tenancy agreement which states in part,

*No Marijuana: No smoking, including marijuana or vaporizers inside the home or on the Premise is permitted without written consent from the Landlord or strata corporation. **No***

***recreational or medical marijuana may be grown on the Premise by the Tenant(s) or guest(s) without the prior written consent of the Landlord or strata corporation who reserve the right to ban cultivation. However, consuming medical marijuana with a vaporizer or in cannabis edibles, tonics, or concentrates is permitted with a medical prescription. All medical prescriptions must be delivered and authorized by the Landlord or Landlord's agent to confirm authenticity.***

[reproduced as written]

The tenant confirmed that he acknowledged and initialled his acceptance of this term when the tenancy began. The tenant argued that he was only given 18 days to “get rid of” the marijuana, however he was able to remove all plants in time.

The landlord argued that a subsequent inspection was conducted on August 19, 2020 in which the landlord still found marijuana plants in the yard. The landlord referred to photographs “marijuana\_-1”, “-2” and “-3” show marijuana plants hidden under a boat cover. A review of these photographs show what appear to be marijuana plants in big boxes. The tenant made no further comments.

### Analysis

In an application to cancel a 1 Month Notice, the landlord has the onus of proving on a balance of probabilities that at least one of the reasons set out in the notice is met.

I accept the undisputed affirmed evidence of both parties and find that the landlord did serve the tenant with the notice to end tenancy dated August 20, 2020 on August 20, 2020 via Registered Mail.

Both parties confirmed the landlord gave notice to the tenant warning him to remove the marijuana plants or that the tenancy could be ended as a Breach of a Material Term of the Tenancy.

The landlord's reason for cause: Breach of a material term of the tenancy, section 41 of the signed tenancy agreement clearly states that “***No recreational or medical marijuana may be grown on the Premise by the Tenant(s) or guest(s) without the prior written consent of the Landlord or strata corporation***”.

The landlord provided undisputed affirmed evidence that a second inspection took place on August 19, 2020 in which the landlord found marijuana plants in boxes under the boat cover as shown in the submitted photographs. On this basis, I find that the

landlord has provided sufficient evidence of a breach of a material term of the tenancy agreement. The tenant's application to cancel the 1 month notice dated August 20, 2020 is dismissed. The 1 month notice is upheld.

Pursuant to section 55 of the Act, the landlord is granted an order of possession. As the effective end of tenancy date has now passed, I order that the order of possession be effective 2 days after it is served upon the tenant.

### Conclusion

The landlord is granted an order of possession.

This order must be served upon the tenant. Should the tenant fail to comply with this order, the order may be filed in the Supreme Court of British Columbia and enforced as an order of that Court.

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: October 09, 2020

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Residential Tenancy Branch