



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding HomeLife Advantage Realty Ltd.  
and [tenant name suppressed to protect privacy]

## **DECISION**

### **Dispute Codes**

CNC, FFT

### **Introduction**

This hearing was convened as a result of the Tenants' Application for Dispute Resolution ("Application") under the *Residential Tenancy Act* ("Act") to cancel a One Month Notice to End Tenancy for Cause dated April 27, 2021 ("One Month Notice"), and to recover the \$100.00 cost of their Application filing fee.

An agent for the Landlord, V.F. ("Agent"), appeared at the teleconference hearing and gave affirmed testimony. No one attended on behalf of the Tenants. The teleconference phone line remained open for over ten minutes and was monitored throughout this time. The only person to call into the hearing was the Agent, who indicated that she was ready to proceed. I confirmed that the teleconference codes provided to the Parties were correct and that the only person on the call, besides me, was the Agent.

The Tenants were provided with a copy of the Notice of a Dispute Resolution Hearing on May 12, 2021; however, the Tenants did not attend the teleconference hearing scheduled for September 03, 2021 at 9:30 a.m. (Pacific Time). The phone line remained open for 13 minutes and was monitored throughout this time. The only person to call into the hearing was the respondent Landlord's Agent, who indicated that she was ready to proceed.

Rule 7.1 states that the dispute resolution hearing will commence at the scheduled time unless otherwise set by the arbitrator. The Respondent Agent and I attended the hearing on time and were ready to proceed, and there was no evidence before me that the Parties had agreed to reschedule or adjourn the matter; accordingly, I commenced the hearing at 9:30 a.m. on September 3, 2021, as scheduled.

Rule 7.3 states that if a party or their agent fails to attend the hearing, the Arbitrator may conduct the dispute resolution hearing in the absence of that party or dismiss the application, with or without leave to reapply. The teleconference line remained open for minutes, however, neither the Applicants nor an agent acting on their behalf attended to provide any evidence or testimony for my consideration. As a result, and pursuant to Rule 7.3, I **dismiss the Tenants' Application without leave to reapply**.

### Preliminary and Procedural Matters

The Tenants provided the Parties' email addresses in the Application, and the Agent confirmed her email address in the hearing. She also confirmed her understanding that the Decision would be emailed to both Parties, with any Orders emailed to the appropriate Party.

Following the ten-minute waiting period, the Application of the Tenants was **dismissed without leave to reapply**, as the Tenants failed to attend the hearing to present the merits of their Application or at the very least cancel their scheduled hearing in advance of the hearing. The Agent did attend the hearing and was ready to proceed.

Section 55 of the Act states that if a tenant's application to cancel an eviction notice is unsuccessful and is dismissed, and I am satisfied that the eviction notice complies with the requirements under section 52, I must grant the landlord an order of possession.

### Issue(s) to be Decided

- Should the One Month Notice be cancelled or confirmed?
- Is the Landlord entitled to an order of possession?
- Are the Tenants entitled to recovery of their \$100.00 Application filing fee?

### Background and Evidence

The Agent confirmed the details in the tenancy agreement that the Parties submitted. She confirmed that the periodic tenancy began on December 7, 2019, with a monthly rent of \$1,400.00, due on the first day of each month. The Agent confirmed that the

Tenants paid the Landlord a security deposit of \$700.00, and a pet damage deposit of \$700.00.

The Landlord served the Tenants with a One Month Notice that was signed and dated April 27, 2021, it has the rental unit address, it was served by being posted on the rental unit door on April 27, 2021, it has an effective vacancy date of May 31, 2021. It was served on the grounds that (i) the Tenants or a person permitted on the property by the Tenants has significantly interfered with or unreasonably disturbed another occupant or the landlord; and (ii) the Tenants or a person permitted on the property by the Tenants has engaged in illegal activity that has, or is likely to: adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant.

In the hearing, the Agent said:

The tenancy began in Dec 2009. We have been receiving complaints from the Strata and other occupants saying that the Tenants are smoking marijuana and not being respectful, and the smoke is going off their property. The marijuana is wafting into other occupants' units. They have been fined by the Strata for breaching the Strata's Bylaw 3.1 not to 'cause a nuisance or hazard to another person, unreasonably interferes with the rights of other persons to use and enjoy the common property, common assets or another strata lot.'

We did an inspection after the One Month Notice was posted, and it smelled like they had smoked marijuana just before we entered. They have not denied it and they have not paid the fines.

The Agent submitted letters and emails that the property management company has received from other occupants of the residential property. These include the following comments:

It has been brought to the Council's attention that there is constant use of marijuana causing nuisance to the surrounding neighbour, and he has lost tenants due to the overwhelming odor.

The next-door tenant wrote the following email dated August 7, 2015, about the Tenants:

I'm not sure what the process is, but something has to be done about the women smoking pot all day in [rental unit]. It has been a problem for many years, something that we just learned to put up with to some degree, but my tenants are

now upset: 'We smell it every 4-6 hours, 24 hours a day, with cigarette smoke in between.'

The Agent said that the problem continues to this day and that the Tenants have not paid the Strata fines associated with this behaviour.

### Analysis

Based on the documentary evidence and the testimony provided during the hearing, and on a balance of probabilities, I find the following.

Section 47 of the Act allows the landlord to end a tenancy for cause:

47(1) A landlord may end a tenancy by giving notice to end the tenancy if one or more of the following applies:

...

(d) the tenant or a person permitted on the residential property by the tenant has

- (i) significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property,
- (ii) seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant, or
- (iii) put the landlord's property at significant risk;

Rule 6.6 sets out the standard of proof and the onus of proof in dispute resolution proceedings, as follows:

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed.

The onus to prove their case is on the person making the claim. In most circumstances this is the person making the application. However, in some situations the arbitrator may determine the onus of proof is on the other party. For example, the landlord must prove the reason they wish to end the tenancy when the tenant applies to cancel a Notice to End Tenancy.

In this case, the Landlord alleged that the Tenants smoke cannabis throughout the day, which significantly interferes with or unreasonably disturbed another occupant or the Landlord of the residential property.

When I consider all the evidence before me overall, I find that the Landlord has provided sufficient evidence to meet their burden of proof on a balance of probabilities, and to support the validity of the One Month Notice.

I also find that the One Month Notice issued by the Landlord complies with section 52 of the Act as to form and content. I confirm the validity of the One Month Notice.

Given the above, and pursuant to section 55 of the Act, I find that the Landlord is entitled to an Order of Possession.

I grant the Landlord an Order of Possession, pursuant to section 55 of the Act, **effective two days after service** of this Order on the Tenants.

The Tenants' Application is wholly dismissed without leave to reapply.

### Conclusion

The Tenants' Application is dismissed without leave to reapply, as the Tenants or an Agent for the Tenants did not attend the hearing to present the merits of the Application. The Respondent Landlord's Agent did attend the hearing. This Decision will be emailed to the addresses provided by the Tenants in the Application and confirmed by the Agent in the hearing.

Pursuant to section 55 of the Act, I grant an Order of Possession to the Landlord effective **two days after service of this Order** on the Tenants. The Landlord is provided with this Order in the above terms and the Tenants must be served with **this Order** as soon as possible.

Should the Tenants 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: September 03, 2021

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Residential Tenancy Branch