



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      CNC, LRE, LAT, FFT

### Introduction

Pursuant to section 58 of the Residential Tenancy Act (the Act), I was designated to hear an application regarding the above-noted tenancy. The tenant applied for:

- cancellation of the One Month Notice to End Tenancy for Cause (the Notice), pursuant to section 47;
- an order to restrict or suspend the landlord's right of entry, under section 70;
- an order of authorization to change the lock, pursuant to sections 31 and 70; and
- an authorization to recover the filing fee for this application, under section 72.

Both parties attended the hearing. The tenant was assisted by advocate RM. Witness for the tenant BB also attended. All were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

At the outset of the hearing the attending parties affirmed they understand it is prohibited to record this hearing.

Per section 95(3) of the Act, the parties may be fined up to \$5,000.00 if they record this hearing: "A person who contravenes or fails to comply with a decision or an order made by the director commits an offence and is liable on conviction to a fine of not more than \$5 000."

The landlord confirmed receipt of the notice of hearing on July 31, 2021. The tenant affirmed he served the evidence package on October 20, 2021. The landlord confirmed receipt of the evidence packages on October 20 and 25, 2021.

Rule of Procedure 3.14 States:

Evidence not submitted at the time of Application for Dispute Resolution Except for evidence related to an expedited hearing (see Rule 10), **documentary and digital evidence that is intended to be relied on at the hearing must be received by the respondent and the Residential Tenancy Branch directly or through a Service BC Office not less than 14 days before the hearing.**

(emphasis added)

I accept the tenant served the notice of hearing in accordance with section 89 of the Act. The evidence packages served on October 20 and 25, 2021 are excluded, per Rule of Procedure 3.14.

The tenant confirmed receipt of the landlord's response evidence and that he had enough time to review it. I find the landlord served the response evidence in accordance with section 89 of the Act.

#### Preliminary Issue- Unrelated Claims

Residential Tenancy Branch Rule of Procedure 2.3 states that claims made in an application for dispute resolution must be related to each other. Arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply.

It is my determination that the priority claim regarding the Notice and the continuation of this tenancy is not sufficiently related to any of the tenant's other claims to warrant that they be heard together.

The tenant's other claims are unrelated in that the basis for them rests largely on facts not germane to the question of whether there are facts which establish the grounds for ending this tenancy as set out in the notice. I exercise my discretion to dismiss all of the tenant's claims with leave to reapply except cancellation of the notice to end tenancy which will be decided upon.

#### Issues to be Decided

Is the tenant entitled to:

1. Cancellation of the Notice?
2. An authorization to recover the filing fee?

If the tenant's application is dismissed, is the landlord entitled to an order of possession?

#### Background and Evidence

While I have turned my mind to the accepted evidence of the attending parties, not all details of the submission and arguments are reproduced here. The relevant and important aspects of the tenant's claims and my findings are set out below. I explained rule 7.4 to the attending parties; it is the landlord's obligation to present the evidence to substantiate the Notice.

Both parties agreed the tenancy started on April 01, 2021. Monthly rent is \$2,000.00, due on the first day of the month. At the outset of the tenancy a security deposit of \$1,000.00 was collected and the landlord holds it in trust. The tenancy agreement was submitted into evidence.

The tenant confirmed receipt of the Notice on June 26, 2021. The tenant submitted the application on July 04, 2021.

The reasons to end the tenancy are:

- The tenant or a person permitted on the property by the tenant has
  - Seriously jeopardized the health or safety or lawful right of another occupant or the landlord.
  - Put the landlord's property at significant risk.
- Tenant or a person permitted on the property by 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 the other occupant
  - Jeopardize a lawful right or interest of another occupant or the landlord.

The Notice is dated June 25, 2021 and the effective date is July 31, 2021. The tenant continues to occupy the rental unit.

The details of the cause are:

At approximately 2:50 A.M. on the morning of 25 June 2021 the fire alarm was activated at [rental unit] resulting in the fire department entering the building and residents congregating outside. When it was noted that the occupant of [tenant] was absent it became necessary to enter his suite on an emergency basis to protect life and property and in doing so a marijuana grown operation (grow-op) was discovered in the den area adjacent to the kitchen, the entire floor of which was completely covered with marijuana plants of approximately 1-1.5 feet in height, the number of plants estimated at around 10 times the legal [non legible] was in operation as well as supplementary lighting.

The landlord affirmed on June 25, 2021 she entered the rental unit and found around 40 marijuana plants measuring 18 inches in the den, as well as fans and lights for a marijuana grow operation. The tenant stated that on June 25, 2021 there were maybe 12, 20 or 25 plants in the rental unit and that he uses marijuana for medical reasons.

Both parties agreed the tenancy agreement does not contain clauses about marijuana.

The tenant testified he has a license to grow up to 255 marijuana plants. The landlord said she does not believe the tenant has a license to grow more than four marijuana plants.

The tenant affirmed he removed the plants from the rental unit shortly after June 25, 2021, put some of them on the roof of the rental building and then removed them from the rental building a long time ago. The landlord is aware that the marijuana plants were removed.

The landlord stated the marijuana plants caused mould, contaminated the air and caused a strong odour.

The landlord hired a mould treatment company to inspect the rental unit. The mould assessment report dated August 17, 2021 states:

A photo taken by the client prior to the assessment was observed that showed marijuana plants growing in the den area of the condo unit (see attached photo). The photo was reportedly taken during the emergency inspection by the client. At the time of assessment there were no marijuana plants observed in the condo unit. There were holes in the textured ceiling in both the den and bedroom that were consistent with hanging equipment such as lights from the ceiling for indoor marijuana grow operations. There was water damage and staining on the hardwood floor in the den (see attached photos). Moisture levels were measured in the hardwood floor and the moisture was elevated to 24% moisture content.

[...]

**At the time of sampling the indoor air sample collected from the condo unit is considered elevated with mold spores.** The *Penicillium/Aspergillus* like species was detected at concentrations approximately 5 times greater than the outdoor baseline sample. *Fusarium* was detected at concentrations approximately 2 times greater than the outdoor baseline air sample. These molds are known to produce mycotoxins and can pose a health risk to occupants. The air sampling confirms mold growth is present in the condo unit that is impacting the air quality in the condo unit. The condo unit requires mold remediation.

Residential condo units are not designed to grow marijuana plants. The plants require a lot of water and create humidity which results in mold growth. **In almost all cases where marijuana plants are grown indoors in residential buildings, mold growth is a result** which can create unsafe living conditions for the occupants of the building including occupants of other units in the building.

(emphasis added)

The landlord testified the mould treatment will cost around \$8,000.00.

The tenant said the rental unit had most of the mould that it has today when the tenancy stated. The condition inspection report (the report), signed by both parties on April 01, 2021, states: "Dark points in front of washer and dryer in the entry area", "slight imperfections on the living room floor", "trim between tub + tile needs repair in the main bathroom". The tenant affirmed these issues are related to the pre-existing mould. The tenant stated the rental unit above his had a water leak and that started the mould contamination.

### Analysis

Based on the tenant's testimony, I find the tenant received the Notice on June 26, 2021. I find that the tenant's application was submitted before the ten-day deadline to dispute the Notice, in accordance with Section 47(4) of the Act.

Pursuant to Rule of Procedure 6.6, the landlord has the onus of proof to establish, on a balance of probabilities, that the notice issued to end tenancy is valid. This means that the landlord must prove, more likely than not, that the facts stated on the notice to end tenancy are correct and sufficient cause to end the tenancy.

Section 47(1)(d) and (e) of the Act states:

- (d) the tenant or a person permitted on the residential property by the tenant has [...]
  - (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;
- (e) the tenant or a person permitted on the residential property by the tenant has engaged in illegal activity that
  - (i) has caused or is likely to cause damage to the landlord's property,

- (ii) has adversely affected or is likely to adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant of the residential property, or
- (iii) has jeopardized or is likely to jeopardize a lawful right or interest of another occupant or the landlord;

Based on the tenant's convincing testimony and the report, I find, on a balance of probabilities, the rental unit had mould when the tenancy started on April 01, 2021. I find the landlord failed to prove, on a balance of probabilities, that the tenant is responsible for the mould in the rental unit.

I note that the mould assessment report indicates: "In almost all cases where marijuana plants are grown indoors in residential building, mold growth is a result". I find the report and the coherent tenant's testimony are more persuasive than the mould assessment report.

The parties offered conflicting testimony about the license for the tenant to grow more than four marijuana plants. In cases where two parties to a dispute provide equally plausible accounts of events or circumstances related to a dispute, the party making a claim has the burden to provide sufficient evidence over and above their testimony to establish their claim.

A copy of the license was not accepted into evidence. I find the tenant failed to prove, on a balance of probabilities, that he has a license to grow more than four marijuana plants.

Considering that both parties agreed the tenant removed the marijuana plants from the rental unit shortly after the June 25, 2021 inspection and that the tenancy agreement does not prohibit the tenant to plant marijuana in the rental unit, I find the tenant's action is not serious enough to end the tenancy under section 47(1)(d) and (e) of the Act.

Thus, I find the landlord failed to prove, on a balance of probabilities, the grounds of the Notice. Accordingly, the Notice is cancelled and of no force or effect.

As the tenant is successful with this application, pursuant to section 72 of the Act, I authorize the tenant to recover the \$100.00 filing fee. I order that this amount may be deducted from the next rent payment.

Conclusion

The Notice dated June 25, 2021 is cancelled and of no force or effect. This tenancy will continue in accordance with the Act.

Pursuant to section 72(2)(a) the tenant is authorized to deduct \$100.00 from the next rent payment to recover the filing fee.

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: November 02, 2021

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Residential Tenancy Branch