



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      CNC OLC FF

### Introduction

This hearing was convened as a result of the Tenants' Application for Dispute Resolution. A hearing by telephone conference was held on February 8, 2022. The Tenants applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

- cancellation of the Landlord's 1 Month Notice to End Tenancy for Cause (the Notice) pursuant to section 47; and,
- an order requiring the Landlord to comply with the Act, regulation or tenancy agreement pursuant to section 62.

Both parties attended the hearing and provided testimony. All parties were provided the opportunity to present evidence orally and in written and documentary form, and to make submissions to me. The Landlords confirmed receipt of the Tenants' Notice of Hearing package, including the USB drive with digital evidence. The Landlord did not express that they had any issue opening the digital evidence, and instead stated they felt the evidence was not relevant. I find the Tenants sufficiently served their evidence for the purposes of this proceeding.

The Landlords stated that they uploaded evidence to the RTB website. However, the Landlords were unable to provide a clear account of what was uploaded, and when. The Landlords searched for their evidence submission receipt. However, they did not locate it during the hearing. Instead, the Landlords chose to proceed in the absence of their documentary evidence, as they asserted the only thing they required for their case was a copy of the tenancy agreement (which was included as part of the Tenants' evidence package). The Landlords chose to proceed with oral testimony only.

I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence submitted in accordance with the rules of procedure and evidence that is relevant to the issues and findings in this matter are described in this Decision.

### Preliminary and Procedural Matters

The Tenants applied for multiple remedies under the *Act*, a number of which were not sufficiently related to one another.

Section 2.3 of the Rules of Procedure states that claims made in an Application must be related to each other and that arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply.

After looking at the list of issues before me at the start of the hearing, I determined that the most pressing and related issues deal with whether or not the tenancy is ending. As a result, I exercised my discretion to dismiss unrelated matters, with leave to reapply, on the Tenant's application with the exception of the following claim:

- to cancel the 1 Month Notice to End Tenancy for Cause.

Towards the end of the hearing, and after hearing from both parties regarding the merits of the Notice, I began to have discussions with the parties about reaching a settlement on the above noted matters. After a brief discussion, the parties began arguing with each other, and were not listening to my directions. Neither party was able to refrain from talking over the other party, and as such, I muted all participants, and advised them what I had done, and why. As I was explaining this, the call conference encountered a glitch, and I was disconnected, as were the Landlords. The Tenants remained on the line throughout and when I dialed back into the conference 30 seconds later, I informed the Tenants we would wait for the Landlords to reconnect. After waiting 5 minutes, the hearing was terminated, as the Landlords did not call back in.

I note the hearing was ended somewhat prematurely, and that settlement conversations were impacted. However, I find I have enough before me to render a decision on the issues applied for, and I note both parties had numerous opportunities, prior to the hearing glitch, to present their statements and evidence on the core issues. I find an adjournment is not necessary, and I will proceed to make a decision based on the submissions and evidence.

Issue(s) to be Decided

- Are the Tenants entitled to have the Landlord's 1 Month Notice cancelled?
  - If not, is the Landlord entitled to an Order of Possession?

Background and Evidence

The Tenants acknowledged receiving the Notice on September 28, 2021. The Landlords issued the Notice for the following reason:

*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.*

*Breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.*

Under the "Details of Cause" section the Landlord stated that "Tenant regularly smokes on the property. Tenant signed lease agreement agreeing to no smoking policy on the property. Other tenants in the building have identified this unit as regularly smoking marijuana on the deck and in the unit. This significantly infringes on the rights of these tenants since they also agreed to a no smoking policy because they want to live in an environment free from second-hand smoke. Tenants of 303 consistently disregard the rights of other tenants to enjoy a smoke free environment as agreed to in lease."

The Landlords explained that they issued this Notice because one of the Tenants is repeatedly smoking cannabis in the rental unit, and on the balcony. The Landlords stated that, as per the Tenancy Agreement (with addendum), the Tenants agreed to not smoke in the rental unit, or anywhere on the property. The Landlords feel the Tenants were dishonest at the start of the tenancy, as they didn't say anything about needing to smoke cannabis, despite the Landlords being specific about the property being a no-smoking property. The Landlords stated that they did not provide any emails or complaints from other Tenants because they don't want to identify others for safety reasons. The Landlords stated that they are not aware of any other Tenants from other units smoking anywhere on the property. The Landlords referred to an email in the hearing where another Tenant nearby felt these Tenants were being disruptive, aggressive with the building manager, and that they were smoking when and where they shouldn't have been. The Landlords stated they have "numerous" complaints from other Tenants.

One of the Tenants, K.P., stated that he has a prescription for cannabis under the Access to Cannabis for Medical Purposes Regulations, which is federally administered. The Tenants provided a copy of this certificate into evidence, which shows it was issued on or around July 16, 2021. The other Tenant stated that she is not a cannabis user. Both Tenants deny that any smoking has occurred in the rental unit, or on the balcony as the Landlords have asserted. K.P. was not clear on how he consumes his daily intake of prescribed cannabis, but asserts he uses a variety of methods. K.P. denies that he has been aggressive or abusive in any way, and feels he is being targeted by the Landlords because they do not like him.

### Analysis

In the matter before me, the Landlord has the onus to prove that the reasons in the Notice are valid.

I have reviewed the Notice issued by the Landlord and I find it meets the form and content requirements under section 52 of the *Act*. I note the Tenant received the Notice on September 28, 2021, and applied to dispute it that same day. On the Notice and in the hearing, the Landlord is seeking to end the tenancy under several different grounds because they believe that one of the Tenants has been smoking cannabis in his rental unit, and on his balcony.

After reviewing the evidence on this matter, I note the Landlords have provided no documentary evidence to substantiate that one of the Tenants has been smoking in or around the rental unit, as alleged. The Tenants deny that they have ever smoked in or around the rental unit, as alleged. Although the Tenant acknowledged he has a prescription for medical cannabis, he did not admit to smoking it on the property, and alluded to consuming the product in various ways. In any event, the Landlords assert that one of the Tenants has been smoking on the property and the Tenants deny this has occurred.

When two parties to a dispute provide equally plausible accounts of events or circumstances related to a dispute regarding a Notice to End Tenancy, the Landlord has the burden to provide sufficient evidence over and above their testimony to establish their claim.

I do not find the Landlords have sufficiently demonstrated and substantiated the reasons behind the Notice and that the Tenants have been smoking as alleged. As a result, I do not find the Landlords have sufficiently demonstrated that they have grounds to end the tenancy for the smoking issue, under any of the grounds selected.

Given my findings on this matter, I find the Landlords have not established that there are sufficient grounds to end the tenancy. The Tenants' application is successful and the Notice received by the Tenant is cancelled. I order the tenancy to continue until ended in accordance with the *Act*.

As the Tenants were successful with the application, I grant the recovery of the filing fee against the Landlord. The Tenants may deduct the amount of \$100.00 from 1 (one) future rent payment.

#### Conclusion

The Tenant's application is successful. The Notice is cancelled.

The Tenant may deduct the amount of \$100.00 from one (1) future rent payment.

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: February 08, 2022

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Residential Tenancy Branch