



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      CNC

### Introduction

On September 24, 2021, the Tenant applied for a Dispute Resolution proceeding seeking to cancel a One Month Notice to End Tenancy for Cause (the “Notice”) pursuant to Section 47 of the *Residential Tenancy Act* (the “Act”).

The Tenant attended the hearing, with H.M. attending as an advocate for the Tenant. The Landlord attended the hearing as well. At the outset of the hearing, I explained to the parties that as the hearing was a teleconference, none of the parties could see each other, so to ensure an efficient, respectful hearing, this would rely on each party taking a turn to have their say. As such, when one party is talking, I asked that the other party not interrupt or respond unless prompted by myself. Furthermore, if a party had an issue with what had been said, they were advised to make a note of it and when it was their turn, they would have an opportunity to address these concerns. The parties were also informed that recording of the hearing was prohibited and they were reminded to refrain from doing so. All parties acknowledged these terms. As well, all parties in attendance provided a solemn affirmation.

Service of documents was discussed. The Landlord’s evidence was served by hand on February 1, 2022 and was printed out in a manner that was condensed and hard to read for the Tenant. As the Landlord’s evidence was served late, contrary to the timeframe requirements of Rule 3.15 of the Rules of Procedure, and as it was too difficult to read, I find that it would be prejudicial to the Tenant to accept this evidence. As such, this evidence will be excluded and not considered when rendering this Decision.

All parties were given an opportunity to be heard, to present sworn testimony, and to make submissions. I have reviewed all oral and written submissions before me;

however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

I note that Section 55 of the *Act* requires that when a Tenant submits an Application for Dispute Resolution seeking to cancel a notice to end tenancy issued by a Landlord, I must consider if the Landlord is entitled to an Order of Possession if the Application is dismissed and the Landlord has issued a notice to end tenancy that is compliant with the *Act*.

#### Issue(s) to be Decided

- Is the Tenant entitled to have the Notice cancelled?
- If the Tenant is unsuccessful in cancelling the Notice, is the Landlord entitled to an Order of Possession?

#### Background and Evidence

While I have turned my mind to the accepted documentary evidence and the testimony of the parties, not all details of the respective submissions and/or arguments are reproduced here.

All parties agreed that the tenancy started on June 1, 2021, that rent was currently established at \$550.00 per month, and that it was due on the first day of each month. A security deposit of \$275.00 was also paid. A copy of the tenancy agreement was submitted as documentary evidence.

The Landlord advised that the Notice was served to the Tenant by hand on September 16, 2021 and the Tenant confirmed receiving this. The reason the Landlord served the Notice is because 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.” The Notice indicated that the effective end date of the tenancy was October 31, 2021.

He testified that there have been numerous complaints from other residents of the building due to the Tenant smoking or vaping in the rental unit or on the property, contrary to the tenancy agreement. He provided multiple verbal warnings to the Tenant

to refrain from smoking or vaping, and then subsequently served her a One Month Notice to End Tenancy for Cause, previous to the Notice relevant to this dispute. However, he elected not to apply for an Order of Possession on that previous notice as he attempted to give the Tenant an opportunity to correct her behaviour. Since that first notice was served, she has continued to smoke or vape and he has even smelled this coming directly from her bathroom fan, on occasion. He stated that the Tenant has admitted to smoking in the rental unit.

The Tenant confirmed that she signed the tenancy agreement and believed that there was a “bait and switch” where there was not a no smoking clause indicated. However, the copy of the tenancy agreement she submitted as documentary evidence confirms that she signed a tenancy agreement containing a no smoking clause. She stated that the other residents of the building all smoked as well, and it was her position that the smoke smell may have come from them.

She confirmed that she “accidentally lit up” in the rental unit and that this was a “complete mistake”. As well she stated that after she was warned by the Landlord that smoking was prohibited in the rental unit, she “accidentally” took a puff and vaped in the rental unit as she was getting ready to leave the unit. This happened on at least two occasions.

H.M. advised that there is a culture of smoking in the building and that the other residents do not abide by the rules.

### Analysis

Upon consideration of the evidence before me, I have provided an outline of the following Sections of the *Act* that are applicable to this situation. My reasons for making this Decision are below.

In considering this matter, I have reviewed the Landlord’s Notice to ensure that the Landlord has complied with the requirements as to the form and content of Section 52 of the *Act*. In reviewing this Notice, I am satisfied that the Notice meets all of the requirements of Section 52 and I find that it is a valid Notice.

I find it important to note that a Landlord may end a tenancy for cause pursuant to Section 47 of the *Act* if any of the reasons cited in the Notice are valid. Section 47 of the *Act* reads in part as follows:

***Landlord's notice: 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*

*(ii)seriously jeopardized the health or safety or a lawful  
right or interest of the landlord or another occupant,*

With respect to the reason on the Notice, the Tenant acknowledged that she smoked in the rental unit contrary to the tenancy agreement and that she vaped at least twice after being warned by the Landlord that this was prohibited. As she was made aware by the Landlord that smoking and/or vaping in the rental unit or on the property was prohibited, given that she admittedly continued to do so despite this, I am satisfied that she breached the no smoking term of the tenancy agreement. Furthermore, I find that there is a likelihood that the Tenant will continue this pattern of behaviour as she has already demonstrated that she did not comply after being warned to refrain.

Ultimately, I find that the Tenant's continued non-compliance with the no smoking/vaping term of the tenancy agreement causes me to question her credibility. As such, I prefer the Landlord's affirmed testimony on the whole. I am satisfied that the Tenant is, more likely than not, smoking and/or vaping in the rental unit and that this is causing a serious jeopardization to the health or safety of the Landlord or another occupant of the building.

Consequently, I find that the Landlord is entitled to an Order of Possession that takes effect on **February 28, 2022 at 1:00 PM** after service of this Order on the Tenant. The Landlord will be given a formal Order of Possession which must be served on the Tenant. If the Tenant does not vacate the rental unit after service of the Order, the Landlord may enforce this Order in the Supreme Court of British Columbia.

Conclusion

The Landlord is provided with a formal copy of an Order of Possession effective on **February 28, 2022 at 1:00 PM** after service on the Tenant. Should the Tenant or any occupant on the premises fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

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 7, 2022

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Residential Tenancy Branch