



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding 1048604 BC LTD  
and [tenant name suppressed to protect privacy]

## DECISION

Dispute Codes      CNC

### Introduction

This hearing was convened by way of conference call concerning an application made by the tenant seeking an order cancelling a notice to end the tenancy for cause.

The tenant and an agent for the landlord attended the hearing, and the tenant was accompanied by an Advocate. The parties each gave affirmed testimony and were given the opportunity to question each other and to give submissions.

At the commencement of the hearing the landlord's agent advised that since the tenant already has the documents provided by the landlord for this hearing, the landlord did not provide any evidence to the tenant. It is important that each party receive all evidence provided to the Residential Tenancy Branch, even if the party already has it, to ensure that the parties have what has been provided to the Residential Tenancy Branch. Since the landlord has not provided any evidence to the tenant, I decline to consider the landlord's evidentiary material. The landlord has received the tenant's evidence, all of which has been reviewed and is considered in this Decision.

### Issue(s) to be Decided

Has the landlord established that the One Month Notice to End Tenancy for Cause was issued in accordance with the *Residential Tenancy Act* specifically with respect to the reason for issuing it?

### Background and Evidence

**The landlord's agent** testified that this month-to-month tenancy began on October 1, 2019 and the tenant still resides in the rental unit. Rent in the amount of \$650.00 is

payable on the 1<sup>st</sup> day of each month and there are no rental arrears. On September 21, 2019 the landlord collected a security deposit from the tenant in the amount of \$325.00 which is still held in trust by the landlord, and no pet damage deposit was collected. The rental unit is an apartment in a complex containing 23 units, and the landlord's agent does not reside on the property.

The landlord's agent further testified that on December 14, 2021 the landlord's agent posted to the door of the rental unit a One Month Notice to End Tenancy for Cause, and a copy has been provided by the tenant for this hearing. It is dated December 14, 2021 and contains an effective date of vacancy of January 17, 2022. The reason for issuing it states:

- Tenant or a person permitted on the property by the tenant has:
  - significantly interfered with or unreasonably disturbed another occupant or the landlord.

The Details of Cause(s) section states: Have had written complaints from other tenants regarding repeated smoking marijuana in the building. No smoking of any kind is permitted in the building. And smoking of marijuana is not permitted anywhere on the property.

The landlord's agent further testified that an Addendum to the tenancy agreement was also signed by the tenant, which states, verbatim: "... there is no smoking permitted inside the premises, including, vaping, e-cigarettes, marijuana, etc. If you choose to smoke outside the building, please refrain from smoking close (within 6 meters to entranceways of the building)."

The landlord has received multiple complaints about a strong smell of pot in the hallway coming from the tenant's rental unit. Three of the complaints were in writing, and multiple complaints were received verbally. One of the written complaints is dated December 2, 2021 stating that the smell was through a bathroom vent on more than 1 occasion since the tenant moved into the rental building. Another written complaint was received dated December 13, 2021.

The landlord has also received 2 complaints since the One Month Notice to End Tenancy for Cause was issued, on January 12, 2022 and February 18, 2022. The manager of the building has talked to the tenant however a written warning was given on December 3, 2021 which states that it is the final warning, and was taped to the door of the rental unit that day; the tenant wasn't home.

The landlord's agent also testified that smoking anywhere on the property might not be on the tenancy agreement because the tenancy agreement has been updated, however

the tenant's tenancy agreement states no smoking of any kind inside the building is permitted.

The building is divided into quarters with 4 units per quarter with fire doors separating each section. There are 8 apartments on each floor, minus 1 for storage on the first floor. Three people in that corner say that they do not smoke marijuana, and all three have lived there since 2015 when the landlord's agent bought the building.

**The tenant** testified that his rental unit is on the bottom floor, and he didn't understand the One Month Notice to End Tenancy for Cause, believing that it was about working on an uninsured vehicle in the parking area. The tenant did not receive any warning letter on the door of the rental unit.

The tenant has not smoked in that building since the Notice to end the tenancy was received. The tenant didn't receive it until December 17, 2021, and was in the rental unit all that time, but under so much stress that the tenant didn't leave.

The tenant had a lot of pain, preventing the tenant from walking. The tenant suffers from COPD and has for the last 10 years, but is doing better, and just trying to live his life.

#### SUBMISSIONS OF THE LANDLORD:

None

#### SUBMISSIONS OF THE TENANT'S ADVOCATE:

The Advocate submits that the Advocate assists people and knows that housing is very limited, and to end this tenancy would likely result in the tenant being homeless.

#### Analysis

Where a tenant disputes a notice to end a tenancy given by a landlord, the onus is on the landlord to establish that it was given in accordance with the *Residential Tenancy Act*, which can include the reason(s) for issuing it.

The Supreme Court, on a Judicial Review Hearing, found that an Arbitrator is to consider that the context of Section 47 is serious enough to warrant ending a tenancy.

It also states that a landlord is required to give the tenant reasonable notice that strict compliance with the tenancy agreement would be enforced before taking steps to end

the tenancy, and that such a notice would have to be clear. In this case, the landlord's agent testified that a final warning notice was taped to the tenant's door on December 3, 2021 because the tenant was not home. The tenant disputes that testimony, stating that no such letters or notices were found on the door of the rental unit, and that the tenant was home.

In the circumstances, I am not satisfied that the landlord has established that the tenant was given any written warning that was clear in its language that any breach of the smoking term in the Addendum to the tenancy agreement was serious enough to contemplate ending the tenancy prior to issuing the One Month Notice to End Tenancy for Cause. Therefore, I cancel it and the tenancy continues.

The *Residential Tenancy Act* also specifies that following a hearing I may make any order necessary to give effect to the rights, obligations and prohibitions under the *Act*, including an order that a landlord or tenant comply with the *Act*, regulations or the tenancy agreement. I find it necessary, to protect the rights of the landlord and other tenants within the rental complex to order the tenant to comply with the tenancy agreement and its Addendum by refraining from smoking inside the rental building.

Since the tenant has been successful with the application, the tenant is also entitled to recovery of the \$100.00 filing fee. I grant a monetary order in favour of the tenant as against the landlord in that amount, and I order that the tenant be permitted to reduce rent for a future month by that amount, or may otherwise recover it by filing the order for enforcement in the Provincial Court of British Columbia, Small Claims division as a judgment.

### Conclusion

For the reasons set out above, the One Month Notice to End Tenancy for Cause dated December 14, 2021 is hereby cancelled and the tenancy continues.

Pursuant to Section 62 (3) of the *Residential Tenancy Act*, I hereby order the tenant to comply with the tenancy agreement by refraining from smoking inside the rental building.

I hereby grant a monetary order in favour of the tenant as against the landlord pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$100.00 and I order that the tenant be permitted to reduce rent for a future month by that amount, or may otherwise recover it.

This order is final and binding and may be enforced.

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: March 22, 2022

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Residential Tenancy Branch