



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding Coquitlam Kinsmen Housing Society  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      CNC

### 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 tenants applied for cancellation of the One Month Notice to End Tenancy for Cause (the Notice), pursuant to section 47.

Both parties attended the hearing. The landlord was represented by managers DB (the landlord), TW and SW. Tenant FC (the tenant) represented tenant IC. 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."

As both parties were present service was confirmed. The parties each confirmed receipt of the application and evidence (the materials). Based on the testimonies I find that each party was served with the respective materials in accordance with sections 88 and 89 of the Act.

### Issues to be Decided

Are the tenants entitled to cancellation of the Notice?

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

## Background and Evidence

While I have turned my mind to the evidence of the attending parties, not all details of the submission and arguments are reproduced here. The relevant and important aspects of the tenants' 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 September 01, 2018. Monthly rent is \$466.00, due on the first day of the month. At the outset of the tenancy a security deposit of \$400.00 and a key deposit of \$50.00 were collected and the landlord holds them in trust. The tenancy agreement was submitted into evidence. It indicates: "Property rules: No smoking of any type anywhere on the property. This includes guests. We have been smoke-free since 2014."

Both parties agreed the landlord served the Notice and the tenants received it on January 12, 2022. The tenants submitted this application on January 19, 2022 and continue to occupy the rental unit.

The Notice was submitted into evidence. It is dated January 12, 2022 and the effective date is February 28, 2022.

The reasons to end the tenancy are:

- The tenant or a person permitted on the property by the tenant has
  - Significantly interfered with or unreasonably disturbed another occupant or the landlord.
  - Seriously jeopardized the health or safety or lawful right of another occupant or the landlord.
- Breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.

The details of the cause are:

Mr. has a 'history of smoking cannabis inside the unit. At the time of the tenancy Mr. signed a 'Smoke Free Housing Addendum'. Multiple letters have been issued to Mr. and the smoking would cease for a short period of time. Mr. met with the board of directors on December 31, 2021 and denying he smoked cannabis in the unit blaming the smell on another neighbor. Mr. received a letter from the president of the board of directors dated April 1, 2021 informing him it is a 'final warning' and failure to cease

smoking marijuana and/or cigarettes in your unit and/or on the premises may result in a notice to end tenancy. Mr. started smoking cannabis in the unit mid December and continues still.

The landlord affirmed the tenant smokes marijuana in the rental unit since the beginning of the tenancy. The tenant stated he never smoked in the suite and he only smokes on the street.

The landlord submitted complaints from tenant FS dated between April 01, 2019 and March 21, 2021 and warning letters dated between July 04, 2019 and March 25, 2021.

The tenant confirmed receipt of the April 01, 2021 letter:

Thank you for meeting with myself and two other Board members on March 31st 2021 regarding complaints about you smoking cigarettes and/ marijuana the premises and in your unit.

As discussed, smoking marijuana in your unit and on the premises is a breach of both your Tenancy Agreement 23. Conduct The tenant agrees that if any occupant or guest causes unreasonable and/or excessive noise or disturbances the landlord may end the tenancy. This includes activity that has or is likely to adversely affect the quiet enjoyment, security, safety or physical well being of another occupant or the landlord.and the "Smoke Free Addendum" you signed at the beginning of your tenancy. Please note this letter is a final warning and failure to cease smoking marijuana and/or cigarettes in your unit and/or on the premises may result in a notice to end your tenancy.

The landlord testified that other tenants verbally complained the tenant smokes marijuana in his rental unit between April 01, 2021 and January 09, 2022.

The landlord said that 2 of the 3 next-door neighbours of the tenant affirmed there is smoke pollution originating from the tenant's unit. The tenant from unit \*\*6 (the complete number is recorded on the cover page of this decision) verbally complained and moved out in December 2021. On March 01, 2022 a new tenant moved to unit \*\*6 and verbally complained in March and April 2022. The tenant stated the previous tenant from unit \*\*6 used to smoke in her rental unit. The landlord denied this claim.

On January 10, 2022 tenant FS emailed the landlord:

As you know, my son and I have been suffering from the smell of marijuana coming from unit 127 for a long time without getting any further results. We still smell and

inhale the order once or twice every few days, for example very recently on New Year's Day and January 9th around 3:19 pm. I can't turn on the furnace again because it causes bad smell to spread throughout my house. I want you to know, I have nothing to do with whether that my neighbour smokes or not, but the fact that he does not respect the neighbour's right bothers me. Please take this issue seriously before he puts our health specially my sons in jeopardy.

FS testified that she lives next-door to the tenant and there is smoke pollution originating from the tenant's unit since when he moved in. FS said the smoke pollution originates from the air vents that are shared with the tenant. FS affirmed that the tenant had an altercation with her regarding shoeboxes in front of her door. The tenant stated that FS submitted the January 10, 2022 complaint after the altercation regarding the shoeboxes and on January 01, 2022 the tenant was not at the rental unit.

The tenant testified there is a trail right behind his rental unit and people smoke marijuana on this trail and also in a neighbouring building 10 feet from his rental unit. The landlord said the trail is 50 feet from the rental unit and the neighbouring building is 60 feet from the rental unit.

Tenant JP affirmed that she lives in the same rental building and the tenant does not smoke in his rental unit. JP enters the tenant's rental unit about once per month, as their children are friends. JP did not smell marijuana in the tenant's rental unit. JP observed the tenant smoking on the street.

The landlord stated that she did not serve the Notice earlier because of the pandemic. The landlord served a prior one month notice to end tenancy and voluntarily cancelled it for compassion.

### Analysis

I accept the undisputed testimony that the landlord served the Notice and the tenants received it on January 12, 2022. I find the tenants disputed the Notice within the time frame of 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 (h) of the Act states:

- (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
  - [...]
  - (h) The tenant
    - (i) has failed to comply with a material term, and
    - (ii) has not corrected the situation within a reasonable time after the landlord gives written notice to do so;

I find the complaints received by the landlord between April 01, 2019 and March 21, 2021 and the warning letters dated between July 04, 2019 and March 25, 2021 are not a reason to end the tenancy, as the landlord only served the Notice on January 12, 2022. Per Covid Regulation M195, landlords could not serve a one month notice to end tenancy for cause between March 30 and June 23, 2020.

The testimony of the parties in regard to the tenant smoking in the rental unit is conflicting. When one party provides testimony of the events in one way, and the other party provides an equally probable but different explanation of the events, the party making the claim (in this case the landlord) has not met the burden on a balance of probabilities and the claim fails.

I find the landlord, the tenant, and witnesses FS and JP offered a convincing testimony. The tenant explained that he was not in the rental unit on January 01, 2022 and stated there was an altercation with tenant FS before she submitted the January 10, 2022 complaint email. The landlord only submitted written complaints from FS. As such, I find the landlord failed to prove the tenant smoked in the rental unit.

Thus, I find the landlord failed to prove, on a balance of probabilities, the grounds of the Notice. Accordingly, the Notice dated January 12, 2022 is cancelled and of no force or effect.

For education purposes, I note that per section 19(1) of the Act, a landlord is not permitted to accept either a security deposit or a pet damage deposit that is greater

than the equivalent of 1/2 of one month's rent payable under the tenancy agreement. The value of the security deposit accepted by the landlord was unlawful.

Conclusion

The One Month Notice dated January 12, 2022 is cancelled and of no force or effect. This tenancy will continue in accordance with the Act.

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: April 20, 2022

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Residential Tenancy Branch