



# 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 Tenant's Application for Dispute Resolution. A hearing by telephone conference was held on January 6, 2023. The Tenant 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 affirmed testimony. All parties were provided the opportunity to present evidence orally and in written and documentary form, and to make submissions to me.

Both parties confirmed receipt of each other's evidence and no service issues were raised.

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 Tenant 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 Tenants' application with the exception of the following claim:

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

#### Issues(s) to be Decided

- Is the Tenant entitled to have the Notice cancelled?
  - If not, is the Landlord entitled to an Order of Possession?

#### Background and Evidence

The landlord issued the Notice for the following reasons:

*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.*
- *put the Landlord's property at significant risk.*

Under the "Details of Cause" section, the landlord specified the following: "Tenant is in a non smoking unit. Have 7 year old and mom next door complaining about smoking and marijuana going into their side. They won't reside there due to health concerns. I warned Tenant twice and the last two occasions I legally entered unit and strong smell of weed and smoke evident. Also going to other side plus dog on property and 2 extra tenants. Tenant and daughter smoking."

The Landlord, D.A., stated that he rented this unit to the Tenant with the understanding that it was a non-smoking unit, and the Landlord asserts the Tenant has smoked cannabis and cigarettes both inside the unit, and on the deck, immediately outside the

house. The Landlord, D.A., stated that the smoke drifts into the adjacent rental unit and negatively impacts those who live next door. He stated that the Tenant rents out the suite that is directly attached to the main rental unit, where other individuals reside. He stated that his ex-common law partner, S.W., her sister E.W., and their daughter all live beside the Tenant next door, and they are all being impacted by the smoke. The Landlord, D.A., stated that his daughter has health challenges, which previously warranted her being in the hospital for an extended period of time, and cannot tolerate the smoke, which has caused her to stay elsewhere for the time being.

The Landlord, D.A., stated that he has seen the Tenant smoking when he was on the property last July and August. He further stated that the Tenant was being considerate for a while, and would smoke away from the house, but she has again reverted to smoking right next to the house, allowing the smoke to drift into the unit next door, impacting S.W., E.W, and S.W.'s daughter. The Landlord also pointed out that the Tenant is not allowed pets, yet she had a dog for a week. The Landlord also stated that the Tenant is running a business in her suite, without permission. Although he did not elaborate on this matter.

The Landlord provided a typed letter (digitally signed) from E.W. who lives next door to the Tenant and states that she has smelled second hand smoke (cannabis and cigarettes) coming from the unit next door on many occasions, since she moved in around June 2022. In the letter, E.W. also stated that she lives with one of the Landlords, S.W. and her daughter, in the unit that is adjacent to the rental unit. E.W. stated that S.W. has had to find alternative accommodations for her daughter because of the second-hand smoke infiltrating the unit. E.W. stated that the S.W.'s daughter had coughing fits from the second-hand smoke coming in the windows and doors. E.W. also stated that she has seen clouds of cannabis smoke within the rental unit.

The Landlord, D.A. also provided a typed letter (digitally signed) from his son, T.A., who said that he witnessed several times that there was smoke inside the residence when the Tenant had her door open.

The Landlord also provided a text message from a tradesman who was at the property doing work, and he stated that in August of 2022, he noticed a strong smell of smoke in the unit, as well as evidence of smoking (ashtray inside with butts).

The Tenant pointed to the tenancy agreement to point out the following term:

The tenants shall not smoke or vape in the residence at anytime and any infractions would result in a warning and then eviction if continued and any costs associated with cleaning the residence to a non-smoking state. This would include fresh paint and professional cleaning.

The Tenant denies that she has ever smoked inside the unit, and has only ever smoked outside, as the tenancy agreement does not prohibit smoking outside. The Tenant stated that she would use the ashtray outside, and bring it inside when she was done, which is why the tray was seen in her residence. The Tenant does not feel she has done anything wrong because there is nothing prohibiting her from smoking outside. The Tenant did not speak to any of her evidence.

The Landlord stated that there is no smoking allowed anywhere on the property.

### Analysis

In this review, I will not attempt to resolve all evidentiary conflicts, and will focus on evidence and testimony as it relates directly to my findings with respect to whether there are sufficient grounds to end the tenancy.

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

The Tenant entered into written evidence a copy of the Notice. The Landlord issued the Notice under several different grounds, as noted above. I note the Landlord confirmed in the hearing that the main issue behind the Notice was because the Tenant's smoking has impacted others. Also, the Landlord only briefly spoke to other ancillary issues (dog, guests, business) but did not identify these as primary concerns or as the basis for the Notice. Since the Landlord focused his testimony and evidence on the smoking issue, this is the issue I will address in order to determine if there is sufficient cause to end the tenancy under any of the selected grounds.

I note the tenancy agreement states that the Tenant is not allowed to smoke or vape inside the residence. However, it does not speak to whether or not this is permissible outside. Although the Landlord suggests that no smoking is allowed anywhere, I find this is unsupported by the wording in the tenancy agreement, as the tenancy agreement only refers to smoking/vaping inside. In any event, the main issue is whether or not the Tenant's smoking, whether it be inside or outside, is such that it gives the Landlord cause to end the tenancy under any of the following grounds:

- *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.*
- *put the Landlord's property at significant risk.*

I note that even though smoking outside is not prohibited by the tenancy agreement, it must still be done in a considerate way that does not unreasonably disturb others or seriously jeopardize their health/lawful right. The issue I turn to is whether or not the Landlord has sufficiently demonstrated, with supporting evidence, that the Tenant's smoking/vaping gives cause to end the tenancy under the above grounds.

I have reviewed the totality of the evidence and testimony on this matter. I note the Landlord provided a typed, and digitally signed letter from E.W., who resides next door with S.W. and S.W.'s daughter. In this letter, E.W. corroborated what the Landlord, D.A, explained in the hearing, that his and S.W.'s daughter has health issues and has been significantly impacted by the smell of smoke entering their adjacent rental unit, and the smoke is such that their daughter is unable to stay over as it impacts her health. I note the Landlord, D.A, stated his and S.W.'s daughter has health issues and has spent time in the Children's Hospital, which is part of the reason smoking so close to the house cannot be tolerated. I also note the E.W. asserts that if the smoking continues, that she will be looking for other accommodation, as it is also negatively affecting her.

I find the evidence and testimony from the Landlord indicates that at least one other occupant in the building is being significantly interfered with or unreasonably disturbed.

Ultimately, I find there is sufficient evidence to show that other occupants (S.W., her daughter, and E.W) have been unreasonably disturbed by the Tenant's smoking and I find the Landlord had sufficient grounds to issue the Notice. The Tenant's application to cancel the Notice is dismissed. The tenancy is ending. Having made this finding, it is not necessary for me to consider the other ground indicated on the Notice.

Under section 55 of the *Act*, when a tenant's application to cancel a Notice to end tenancy is dismissed and I am satisfied that the Notice to end tenancy complies with the requirements under section 52 regarding form and content, I must grant the landlord an order of possession.

I find that the Notice complies with the requirements of form and content. The landlord is entitled to an order of possession.

As the tenant was not successful with his application, I dismiss her claim to recover the cost of the filing fee.

Conclusion

The Tenant's application to cancel the 1-Month Notice to End Tenancy for Cause is dismissed. Further, I dismiss the tenant's request to recover the cost of the filing fee.

The Landlord is granted an order of possession effective **two days after service** on the Tenant. This order must be served on the Tenant. If the Tenant fails to comply with this order the Landlord may file the order with the Supreme Court of British Columbia and be enforced as an order of that Court.

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: January 9, 2023

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Residential Tenancy Branch