



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing

A matter regarding COMDOR INVESTMENT  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      CNC

### Introduction

This hearing dealt with an application filed by the tenant pursuant the *Residential Tenancy Act* (the “Act”) for An order to cancel a 1 Month Notice to End Tenancy for Cause, pursuant to sections 47 and 55.

The tenant attended the hearing and was represented by an advocate, AM. The landlord was represented at the hearing by owner, BT and an advocate, ES. The landlord acknowledged receipt of the tenant’s Notice of Dispute Resolution Proceedings package and the tenant acknowledged service of the landlord’s evidence. Neither party took issue with timely service of documents.

The parties were informed at the start of the hearing that recording of the dispute resolution is prohibited under the Rule 6.11 of the Residential Tenancy Branch Rules of Procedure (“Rules”) and that if any recording was made without my authorization, the offending party would be referred to the RTB Compliance Enforcement Unit for the purpose of an investigation and potential fine under the Act.

Each party was administered an oath to tell the truth and they both confirmed that they were not recording the hearing.

### Issue(s) to be Decided

Should the landlord’s notice to end tenancy for cause be upheld or cancelled?

### Background and Evidence

At the commencement of the hearing, I advised the parties that in my decision, I would refer to specific documents presented to me during testimony pursuant to rule 7.4. In accordance with rules 3.6, I exercised my authority to determine the relevance, necessity and appropriateness of each party’s evidence.

While I have turned my mind to all the documentary evidence, including photographs, diagrams, miscellaneous letters and e-mails, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of each of the parties' respective positions have been recorded and will be addressed in this decision.

The parties agree the tenancy began approximately 4 years ago in 2018. It is currently month to month and rent is \$1,485.00 per month.

The landlord testified that he personally served the tenant with a 1 Month Notice to End Tenancy for Cause on October 7, 2022. A copy of the notice to end tenancy was provided as evidence. It states:

1. the tenant or a person permitted on the property by the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord;
2. 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;

under "details of cause", the landlord wrote:

1. *Smoking tobacco or cannabis inside your suite resulting in excessive second-hand smoke entering other tenants suite.*
2. *Excessive noise and disturbance from from your suite when your visiting son/sons come to live with you.*

*We have brought this to your attention and given you many warnings in the past 3 years, we have no choice but to ask you to leave because the other tenants are taken me to court under the Residential Tenancy Act as follow:*

*"With respect to quiet enjoyment, the Residential Tenancy Act entitles a tenant to receive quiet enjoyment, including freedom from unreasonable disturbance which could include excessive second-hand smoke from tobacco or cannabis "*

(reproduced as written)

The tenant's advocate gave the following testimony. She is the daughter of the tenant occupying the unit above the tenant in this hearing. The advocate alleges that the tenant's son attends at the tenant's unit and on occasion, the two of them fight. The noise caused by the fighting affects her mother's mental and physical health. According to the advocate, the tenant's son is heard to call his mother names and the two of them

yell at one another, disturbing others in the building, including the advocate's mother. The advocate also alleges that the tenant's son plays video games and screams and yells while playing.

In evidence, the landlord provided statements from the tenants living below the tenant's unit noting *"screaming and arguing from the floor above"* and *"a marked increase in noise when their son comes for a visit"*. Another statement from an adjacent tenant notes noise, tobacco, marijuana smoke and loud parties however this tenant is unable to provide specific dates and times and does not directly attribute these things to the tenant in this proceeding.

Secondly, the landlord's advocate testified that her mother's quiet enjoyment of the unit is being affected by the tenant's son's cannabis use. There is a pattern of cannabis smoke use at 8:30 or 9:00 in the morning, then again at 5:00 p.m. while the tenant is at work. In evidence, the landlord provided statements from the advocate's mother, the advocate and a guest who visited the advocate's mother. Each of the statements note that the smell of cannabis affects the advocate's mother's health and is strong. The advocate's mother also made a list of each time she smelled cannabis smoke.

The advocate testified that she personally explored the building to find the source of the cannabis smoking and even went to the roof to investigate. She attributes it to the tenant's son, based on the fact that the smell coming from the vents which are connected to the suite below. Her children have smelled it and they have stopped visiting the advocate's mother for health concerns.

The tenant gave the following testimony. She also hears noises from other units in the building and smells cannabis smoke. She denies that the noise or the smoke is coming from her unit. She also hears video games being played, swearing and loud music coming from other tenants in the building. Her children are not allowed to swear, and she considers it an insult to be accused of smoking cannabis as this act goes against her religion. She works in healthcare and she has severe asthma. She does not treat patients who are smokers due to this condition.

The tenant called her son as a witness. He testified that he has never held a party at his mother's unit. He's 31 years old and has his own residence by himself. He is the only son living close to his mother and he comes to visit approximately once per week in the late afternoon. As a Muslim, he specifically denies smoking cannabis, smoking it in his mother's unit or having seen anybody ever smoke cannabis in his mother's unit. He

has never used a swear word in his mother's presence. His mother, the tenant, takes care of his father and works 2 jobs.

The tenant's advocate submits that much of the evidence supplied for this hearing was gathered in 2019 and 2020 and should not be considered because it is old and outdated. She further argues that the landlord cannot rely upon incidents that occurred after the landlord served the notice to end tenancy and that the statements written after serving the notice should not be considered either.

The tenant was never given warning letters regarding the noise or cannabis use. Only generic notices not to smoke in the building was put up in the building. The tenant's advocate argues that the landlord has not produced evidence tying either the noise complaints or the cannabis smoking to this tenant.

Lastly, the tenants complain that the building manager has been harassing the tenant and her family based on their racial minority status. In evidence, the tenant provided copies of police reports whereby the building manager was cautioned for harassment due to incidents happening around the time the notice to end tenancy was issued. In one report, the investigating officer notes that the building manager was previously put on a Conditional Sentence Order and the offence included a hate crime flag due to the words used and the tenant's background and religious clothing apparel.

### Analysis

The parties agree the tenant received the 1 Month Notice to End Tenancy for Cause on October 7, 2022. She filed her application to dispute the notice on October 17, 2022, the tenth day after receipt in accordance with section 47 of the Act.

When the tenant files the application, the landlord bears the burden to prove he or she has valid grounds to terminate the tenancy for cause. The landlord must show on a balance of probabilities, which is to say it is more likely than not, that the tenancy should be ended for any of the reasons identified in the Notice. In this case, the landlord has the burden to satisfy me the tenant or the tenant's son was making excessive noise or smoking cannabis in the rental unit.

I look first to the multiple emails sent from the landlord advocate, the daughter of the occupant living directly above the tenant. In the email sent to the Residential Tenancy Branch dated August 12, 2021, the advocate writes "*we have had the building manager and the landlord come in and they say they can't smell it. They have talked to the tenants below my moms who have said they're not doing it, but the landlord has not entered the suite to verify whether or not that's true.*"

In the letter sent to the landlord on July 22, 2021 she writes, *"I'm not sure what has changed below my mom's suite, but unfortunately someone underneath 402 is smoking pot and the smell is coming up into the bedrooms in 402 during the day. Later in the day someone else comes home downstairs and then the smoking stops and it smells like air freshener... I expect you will know if someone has moved in who may be smoking again. Can you please take care of this?"*

In the email dated August 10, 2022 from the advocate, the tenant writes, *"Yesterday was extremely bad, which is why we are contacting you once again. This smoke seems to be coming from [the unit directly below hers, redacted] when their female tenant is not present. It smells like cannabis."*

I also reviewed the emails sent from other tenants in the building, gathered after the notice to end tenancy was issued, who do not mention cannabis smoke but plant watering on the balcony, grease in the drains and noise.

While the landlord's advocate has testified that she believes the source of the cannabis smoke is the unit below her mother's and that she has done extensive investigations to conclude that it is the son of the tenant who is smoking cannabis, I find I cannot come to the same conclusion. The tenant's son, the alleged cannabis smoker, clearly denies using it, and testified that smoking cannabis is against his religion. I also accept the son's testimony that he has his own residence and only visits his mother once a week. Likewise, the tenant herself professes to having asthma and cannot attend patients who smoke in her healthcare job.

In *Bray Holdings Ltd. v. Black BCSC 738*, Victoria Registry, 001815, 3 May, 2000, the court quoted with approval the following from *Faryna v. Chorny* (1951-52), W.W.R. (N.S.) 171 (B.C.C.A.) at p.174:

*"The credibility of interested witnesses, particularly in cases of conflict of evidence, cannot be gauged solely by the test of whether the personal demeanour of the particular witness carried conviction of the truth. The test must reasonably subject his story to an examination of its consistency with the probabilities that surround the current existing conditions. In short, the real test of the truth of the story of a witness in such a case must be its harmony with the preponderance of the probabilities which a practical and informed person would readily recognize as reasonable in that place and in those conditions."*

While I accept that the occupant of the unit above the tenant is smelling cannabis smoke, based on a balance of probabilities, I find the tenant's son's testimony to be credible. I find it defies reason that the landlord's son would leave his own residence, come to his mother's to smoke cannabis, then reattend right before she arrives home to smoke more cannabis in her rental unit as the landlord's advocate alleges. It's especially illogical that he would do so when smoking cannabis in public spaces is legal in Canada. Conversely, the landlord's only evidence that the smoke emanates from the tenant's suite is the testimony of the landlord's advocate. I find I have insufficient evidence to satisfy me the source of the cannabis smoke is from the tenant or the tenant's son.

The second issue identified by the landlord is the noise of the tenant's son fighting with her. In evidence and testimony, the landlord's advocate points to complaints sent to the landlord by herself, her mother's friend and her mother. In addition, the landlord's advocate has submitted statements from others in the building.

In a multi-unit tenanted building, the occupants are expected to anticipate that there will be noises from others living alongside them. Although there is evidence of complaints made about the tenant's son, mostly from the landlord's advocate, I find there is insufficient evidence of a significant interference or unreasonable disturbance to other occupants or the landlord. The Merriam-Webster dictionary defines **significant** as, "*having or likely to have influence or effect, of a noticeably or measurably large amount*". **Unreasonable** means, "*exceeding the bounds of reason or moderation*". While I accept that the occupant living above the tenant was hearing noise from the unit below, I find insufficient evidence that it is significant or unreasonable. In text messages, there are references to recording the "*sound of another loud party in [the tenant's unit]*", however the recordings were not presented to me in evidence. No audio recordings whatsoever were supplied for me to determine if the noise is significant or unreasonable.

Moreover, I do not have evidence of the landlord serving any notices to notify the tenant that the noise is significantly interfering with or unreasonably disturbing other occupants of the building or the landlord. The landlord has an obligation to notify the tenant that her behaviour or that of her guests disturbs others. The landlord must also provide a reasonable time for the tenant to correct the behaviour before seeking to end the tenancy. In *Berry and Kloet v. British Columbia (Residential Tenancy Act, Arbitrator)*, [2007 BCSC 257](#), Justice Williamson emphasized that the Act is intended to provide protections for tenants from actions by landlords, save and except in certain circumstances:

[11] *I start from the accepted rules of statutory interpretation. I conclude that the Act is a statute which seeks to confer a benefit or protection upon tenants. Were it not for the Act, tenants would have only the benefit of notice of termination provided by the common law. In other words, while the Act seeks to balance the rights of landlords and tenants, it provides a benefit to tenants which would not otherwise exist. In these circumstances, ambiguity in language should be resolved in favour of the persons in that benefited group: See (Canada Attorney General) v. Abrahams, [1983 CanLII 17](#) (SCC), [1983] 1 S.C.R. 2; Henricks v. Hebert, [1998] B.C.J. No. 2745 (QL)(SC) at para. 55:*

*I think it is accepted that one of the overriding purposes of prescribing statutory terms of tenancy, over and above specifically empowering residential tenants against the perceived superior strength of landlords, was to introduce order and consistency to an area where agreements were often vague, uncertain or non-existent on important matters, and remedies were relatively difficult to obtain.*

I find that the landlord has provided insufficient evidence to satisfy me the second reason for ending the tenancy, unreasonable noise, has been properly addressed by the landlord before seeking to end the tenancy. If the landlord has cause to believe the tenant or her guests are significantly disturbing or significantly interfering with other occupants of the building, the landlord must put the tenant on notice of the behaviour before seeking to end the tenancy. For the reasons stated above, I find the landlord has failed to satisfy me the tenancy should end for the reasons stated on the notice to end tenancy.

#### Conclusion

The notice to end tenancy is cancelled and of no further force or effect. This tenancy shall continue until it is ended 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: March 03, 2023

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Residential Tenancy Branch