



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing

## DECISION

Dispute Codes      CNC

### Introduction

This hearing dealt with an Application for Dispute Resolution (the Application) that was filed by the Tenant on November 28, 2022, under the *Residential Tenancy Act* (the Act), seeking:

- Cancellation of a One Month Notice to End Tenancy for Cause (One Month Notice).

The hearing was convened by telephone conference call at 11:00 am (Pacific Time) on April 6, 2023, and was attended by the Tenant, the Tenant's support person NB, and the Landlord. All testimony provided was affirmed. As the Landlord acknowledged service of the Notice of Dispute Resolution Proceeding (NODRP), and stated that there are no concerns regarding the service date or method, the hearing proceeded as scheduled. As the parties acknowledged receipt of each other's documentary evidence, and raised no concerns with regards to service dates or methods, I accepted the documentary evidence before me for consideration. The parties were provided the opportunity to present their evidence orally and in written and documentary form, to call witnesses, and to make submissions at the hearing.

The parties were advised that interruptions and inappropriate behavior would not be permitted and could result in limitations on participation, such as being muted, or exclusion from the proceedings. The parties were asked to refrain from speaking over me and one another and to hold their questions and responses until it was their opportunity to speak. The parties were also advised that recordings of the proceedings are prohibited, and confirmed that they were not recording the proceedings.

Although I have reviewed all evidence and testimony before me that was accepted for consideration as set out above, I refer only to the relevant and determinative facts, evidence, and issues in this decision.

At the request of the parties, copies of the decision and any orders issued in their favor will be emailed to them at the email addresses confirmed in the hearing.

### Issue(s) to be Decided

Is the Tenant entitled to cancellation of the One Month Notice?

If not, is the Landlord entitled to an order of possession?

### Background and Evidence

The parties agreed that the One Month Notice was personally served on the Tenant on November 18, 2022. The One Month Notice is signed and dated November 18, 2022, has an effective date of December 31, 2022, and gives the following reasons for ending the tenancy:

- the tenant or a person permitted on the residential property by the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property; and
- the tenant has failed to comply with a material term, and has not corrected the situation within a reasonable time after the landlord gave written notice to do so.

In the details of cause section of the One Month Notice it states the following:

<p>Details of Cause(s): Describe what, where and who caused the issue and include dates/times, names etc. This information is required. An arbitrator may cancel the notice if details are not provided.</p> <p>Details of the Event(s):</p> <p>After having given the tenant (Lyle Jensen) a written Caution Notice on May 30th, 2022 regarding complaints received from other tenants about the smell of cigarette smoke in the building, I have received a new complaint from a tenant about the same issue. The tenant informed me (complained to me) that their bathroom reeked of marijuana smoke around midnight on November 17th. This action on the part of the tenant that caused the stench is a clear breach of Clause 47 of the Tenancy Agreement that clearly states that there is no smoking allowed in the building.</p>
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The Landlord stated that the Tenant was served with two previous caution notices with regards to smoking, both of which were submitted for my review. The caution notices are dated October 16, 2020, and May 30, 2022. The Landlord stated that after service of each caution notice, the Tenant's behaviour would change, and there would be no

complaints about smoking or the smell of cigarette and cannabis smoke for a period of time, but the behaviour would eventually reoccur, resulting in complaints. The Landlord stated that the most recent complaint was received on November 17, 2022, from the occupants of the rental unit directly above the Tenant's unit. In the written complaint, a copy of which was submitted for my review, the occupants stated that around midnight the bathroom in their rental unit "reeked" of cannabis. The Landlord submitted a copy of a text message complaint dated October 16, 2022, wherein another occupant of the property stated that the Tenant was smoking in a manner that disturbed them. The Landlord also submitted letters from three other persons who are current or former tenants of the building wherein they state that the Tenant's smoking of cannabis and cigarette disturbed them. In one of the letters the author stated that they witnessed the Tenant smoking in and around their rental unit.

The Landlord stated that clause 47 of the tenancy agreement clearly permits the Tenant to smoke only outside, and only in a location that does not disturb other tenants. The Landlord stated that the Tenant has repeatedly disregarded this term, resulting in complaints from other tenants of the building.

The Tenant denied ever smoking in the rental unit, stating that they only smoke outside and carry the butts inside to place in an ashtray in their rental unit. The Tenant called into question the Landlord's position that smoke could travel between rental units and stated that they were ill on the night of November 17, 2022, with a respiratory illness and could therefore not have been smoking at that time, as their sister had to come and bring them an inhaler. The Tenant submitted a letter from their sister in support of this testimony. The Tenant also submitted a character witness from their previous landlord.

### Analysis

I am satisfied on a balance of probabilities by the documentary evidence presented by the Landlord, specifically two caution letters for smoking and the written complaints from other occupants of the residential property, that the Tenant has unreasonably disturbed other occupants of the property with second hand smoke at various points in time, including most recently on November 17, 2022. While the Tenant argued that the smoke could have come from other occupants or their guests, no documentary or corroboratory evidence in support of this claim was submitted, and given the location of the Tenant's rental unit in relation to the rental unit of the most recent complainant, and the location of the smell of smoke within that rental unit, I find it extremely unlikely that the smell of cannabis smoke could have come from anywhere other than the rental unit.

Although the Tenant submitted a character reference from the previous landlord of the property, this reference speaks to a period several years prior. As a result, I do not find it helpful in determining if the Tenant's current behaviour has been affecting or disturbing other occupants of the property. While the Tenant alleges that they were ill at the time of the most recent complaint, and therefore could not have been smoking, no proof of illness was submitted. I also question the reliability of the letter provided from the Tenant's sister, as it states "on the night in question", rather than providing the actual date to which their statement relates, which I find concerning.

The Tenant's support person also acknowledged at the hearing that the Tenant keeps cigarette butts in an ashtray in their rental unit and the Tenant acknowledged keeping them in the pockets of their clothing, which I find could also have caused or contributed to the smell of cigarettes and cannabis that is unreasonably disturbing other occupants of the property. For these reasons, I find that the Landlord has satisfied me on a balance of probabilities that they have cause under section 47(1)(d)(i) of the Act to end the tenancy. I therefore dismiss the Tenant's Application seeking its cancellation without leave to reapply.

As I am satisfied that the One Month Notice was personally served on the Tenant on November 18, 2022, and that it complies with section 52 of the Act, I therefore find that the Landlord is entitled to an order of possession for the rental unit pursuant to section 55(1)(b) of the Act. As the effective date of the One Month Notice is passed and the Landlord stated that they are open to an order of possession effective on April 30, 2023, as rent for April has been paid, I therefore grant the Landlord an order of possession effective at 1:00 pm on April 30, 2023, pursuant to sections 55(1)(b) and 68(2)(a) of the Act, and Residential Tenancy Policy Guideline #54.

### Conclusion

The Tenant's Application is dismissed without leave to reapply.

Pursuant to section 55(2)(b) of the Act, I grant an order of possession to the Landlord effective at **1:00 P.M. on April 30, 2023, after service of this order** on the Tenant. The Landlord is provided with this order in the above terms and the Tenant must be served with this Order as soon as possible. Should the Tenant fail to comply with this order, it may be filed in the Supreme Court of British Columbia and 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 Act.

Dated: April 6, 2023

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Residential Tenancy Branch