



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding Lumby & District Senior Housing Society  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      CNC

### Introduction

This hearing dealt with the tenant's Application for Dispute Resolution seeking to cancel a notice to end tenancy.

The hearing was conducted via teleconference and was attended by the tenant; his advocate; two agents representing the landlord and their witness.

During the hearing, the landlords did not verbally request an order of possession should the tenant be unsuccessful in his Application.

### Issue(s) to be Decided

The issues to be decided are whether the tenant is entitled to cancel a 1 Month Notice to End Tenancy for Cause, pursuant to Section 47 of the *Residential Tenancy Act (Act)*.

### Background and Evidence

The tenant submitted into evidence the following documents:

- A copy of a tenancy agreement signed by the parties on May 4, 2011 for a month to month tenancy beginning on May 15, 2011 for a monthly rent of \$465.00 due on the 1<sup>st</sup> of each month with a security deposit of \$150.00 paid; and
- A copy of a 1 Month Notice to End Tenancy for Cause issued by the landlord on September 16, 2013 with an effective vacancy date of October 18, 2013 citing the tenant or a person permitted on the property by the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord and/or seriously jeopardized the health or safety or lawful right of another occupant or the landlord; and the tenant has engaged in illegal activity that has or is likely to adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant or the landlord.

The landlord submits that the society Board running the residential property had in place a smoking policy since 2007 that prohibited any smoking in rental units; lounges;

hallways or common areas. The landlord also submits that effective July 1, 2013 a new smoking policy prohibiting smoking anywhere on the grounds was implemented.

The landlord submits that on May 28, 2013 the landlord provided the tenant with a written warning regarding complaints they had received of the tenant smoking in common areas and within 3 metres of doors, windows and other openings.

The landlord submits, by way of an affidavit of a neighbouring tenant, that on September 12, 2013 he was awakened by loud noises and that he opened his door and saw the tenant's cat running up and down the hallway and that he could smell smoke. The affidavit goes on to say that on September 17, 2013 the tenant walked by the neighbours' unit "smoking pot".

The landlord also provided an affidavit of another neighbouring tenant in which she indicates that she was awoken on September 12, 2013 because of loud noises and that she got up and closed the tenant's door. This affidavit does not indicate that this neighbouring tenant smelled smoke.

The tenant disputes ever smoking in his rental unit. He states, and is supported by a written statement by one of his friends, that he only smokes in allowable areas. The tenant submits that since the introduction of the new smoking policy he no longer smokes on the residential property.

The landlord also has submitted into evidence a copy of a July 8, 2013 letter to the tenant from the landlord noting that the Board has received many complaints about the tenant's behaviour of the previous month that includes both verbal and physical abuse. The letter states that people are afraid of the tenant and that the letter is a first warning and that any further complaints may result in eviction.

The landlord submits that two neighbouring tenants provided affidavits regarding an incident in the fall of 2012 regarding an incident between the tenant and one of the complaining neighbours. The landlord acknowledges that the affidavit submitted by the neighbour involved in the incident in 2012 was not signed by that tenant.

The landlord submits that the incident that directly led to the issuance of the 1 Month Notice to End Tenancy for Cause was a physical altercation between the tenant and the landlord's maintenance person.

Both the tenant and the maintenance person provided testimony regard the altercation and what led up to it. Both indicated that the tenant had asserted to the maintenance person that the maintenance person, through a friend, was involved in a marijuana grow operation. As a result of that assertion and the involvement of some other friends and/or acquaintances the altercation ensued in a local bar.

The landlord submits that the tenant and the maintenance person had had a previous incident in relation to one of the meetings between the tenant and the landlord and that the previous incident contributed to the altercation in the bar.

The tenant submits that the altercation in the bar was not on the residential property and was not related to the tenancy. The tenant also vigorously denies smoking in his rental unit at any time. He does acknowledge that he had fallen asleep and his television had been left turned on, on the night in question.

### Analysis

Section 47 of the *Act* allows a landlord to end a tenancy by giving notice to end the tenancy if one or more of the following applies:

- a. 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, or
  - ii. Seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant; or
- b. The tenant or a person permitted on the residential property by the tenant has engaged in illegal activity that
  - i. Has adversely affected or is likely to adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant of the residential property.

In regard to the landlord's submissions regarding the tenant breaching the original smoking policy and in light of the tenant's assertion that he did not smoke in his unit on September 12, 2013 I find it necessary to rely upon the affidavits.

As only one of the affidavits indicates that they smelled smoke in the hallway and the neighbour who closed the tenant's door does not mention the smell of smoke I find there is insufficient evidence to establish the tenant breached the tenancy agreement by smoking in his unit.

In relation to the landlord's new no smoking policy I note that a party to a tenancy agreement cannot unilaterally change any of the terms of a tenancy agreement and despite the Board developing a new policy that the entire grounds are no smoking I find that in relation to this tenancy the landlord is bound by the smoking policy that was in place prior on the date the tenancy agreement was entered into.

I accept the tenant has been provided a written warning on the issue of behaviour and his need to correct inappropriate behaviour, however, I am persuaded by the tenant's position that the events in the bar between the maintenance person and the tenant are

unrelated to the tenancy and cannot be used as grounds to end the tenancy. I find the landlord has failed to establish any link to any previous incidents between the tenant and the maintenance person and this incident.

As the landlord has provided no other evidence of behaviours or activity on the part of the tenant that are recent or of sufficient severity to end a tenancy, I find the landlord has failed to establish they have cause to end the tenancy.

### Conclusion

Based on the above, I order the 1 Month Notice to End Tenancy for Cause issued by the landlord on September 16, 2013 is cancelled and the tenancy remains in full force and effect.

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: November 01, 2013

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Residential Tenancy Branch

