



# 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 Tenants' Application for Dispute Resolution, dated March 8, 2017 (the "Application"). The Tenants applied for the following relief pursuant to the Residential Tenancy Act (the "Act"):

- an order cancelling a One Month Notice to End Tenancy for Cause, dated March 1, 2017 (the "One Month Notice");
- an order that the Landlord comply with the Act, Regulations or a tenancy agreement; and
- an order granting recovery of the filing fee.

The Tenants attended the hearing on their own behalves, as did the Landlord. All parties provided a solemn affirmation.

The Tenants testified that the Notice of a Dispute Resolution Hearing was served on the Landlord in person on March 11, 2017. The Landlord acknowledged receipt. I find the Landlord was duly served with the Notice of a Dispute Resolution Hearing on March 11, 2017.

Further, the Tenants testified the Landlord was served with three pages of type-written submissions by registered mail, but were unable to provide a date for service. The Landlord denied receipt of these documents. The Tenants were advised they could make submissions in their oral testimony. Accordingly, the hearing proceeded.

The Landlord submitted a documentary evidence package in response to the Tenants' Application. The Landlord testified the documentary evidence package was served on the Tenants in person on March 30, 2017. The Tenants acknowledged receipt. I find the Tenants were duly served with the Landlord's documentary evidence package on March 30, 2017.

No further issues were raised with respect to service or receipt of the above documents. The parties represented at the hearing and were ready to proceed. The parties were provided with the opportunity to present evidence orally and in written and documentary form, and to make submissions to me.

I have reviewed all evidence and testimony before me that met the requirements of the Rules of Procedure; however, I refer to only the relevant facts and issues in this Decision.

#### Preliminary and Procedural Matters

Although the parties confirmed the One Month Notice was served upon and received by the Tenants on March 1, 2017, neither party submitted copy of the notice to end tenancy for cause. Accordingly, both parties were instructed to submit a copy of the One Month Notice by fax, which they did.

#### Issue to be Determined

1. Are the Tenants entitled to an order cancelling the notice to end tenancy for cause?
2. Are the Tenants entitled to an order that the Landlord comply with the *Act*, Regulations or a tenancy agreement?
3. Are the Tenants entitled to an order granting recovery of the filing fee?

#### Background and Evidence

The Tenants seek an order cancelling a One Month Notice, which they testified they received on March 1, 2017

The Landlord provided testimony with respect to the One Month Notice. He stated that on March 1, 2017, he became aware that the Tenants' dog was loose on the property. He stated that he went to the Tenants' rental unit to let them know, and noted a strong smell of marijuana coming from inside the rental unit. Accordingly, the Landlord issued the One Month Notice on the basis that the Tenant, or a person permitted on the property by the Tenant has engaged in illegal activity that has, or is likely to, damage the Landlord's property.

The Landlord submitted that smoking marijuana is currently illegal, represents a safety concern, and could impact his insurance. An excerpt from the Landlord's insurance policy dealing with the impact of a "dishonest or criminal act" on coverage was provided. He also expressed concern about smoke damage to the rental unit. The Landlord referred to the tenancy agreement, which confirms that smoking and drugs are not permitted on the rental property.

In reply, J.D. acknowledged she had been smoking a "roach" just before the Landlord came to the door. However, she stated she never smokes inside the rental unit. J.D. also testified that the Landlord entered the rental unit without notice while she was wearing a bathrobe. J.D. uses marijuana to assist with her bi-polar disorder, and suggested the Landlord's decision to issue the One Month Notice may have been racially motivated. In addition, R.D. confirmed that his partner had bundled up "to have a toke outside. Neither of the Tenants disputed that J.D. smoked marijuana on the rental property.

The Tenants also sought an order that the Landlord comply with the Act, Regulations or a tenancy agreement. However, I was referred to no provision in support of this request.

### Analysis

Based on the affirmed oral testimony and documentary evidence, and on a balance of probabilities, I find:

Section 47 of the *Act* permits a landlord to end a tenancy by issuing a notice to end tenancy for the reasons enumerated therein. In this case, the Landlord sought to end the tenancy on the basis that the Tenant or a person permitted on the property by the Tenant has engaged in illegal activity that has, or is likely to, damage to Landlord's property.

The Landlord testified that he observed J.D. smoking marijuana on the rental property on March 1, 2017. He expressed concerns about safety, the potential impact on his insurance, and damage caused to the interior of the rental unit by smoke. The Landlord also noted the tenancy agreement indicates that smoking and drugs are not permitted on the rental property. The Tenants did not dispute that J.D. smokes marijuana, but confirmed J.D. smokes marijuana for health reasons.

After careful consideration of the documentary evidence and oral testimony provided, I find that J.D. engaged in illegal activity that has or is likely to damage the Landlord's property. Accordingly, the One Month Notice is upheld and the Tenant's Application is dismissed.

When a tenant's application to cancel a notice to end tenancy is dismissed and the notice complies with section 52 of the *Act*, section 55 of the *Act* requires that I grant an order of possession to the landlord. A copy of the One Month Notice was submitted with the Landlord's documentary evidence. I find the One Month Notice complies with section 52 of the *Act*. Accordingly, pursuant to section 55 of the *Act*, I find the Landlord is entitled to an order of possession, which will be effective two (2) days after service on the Tenant.

### Conclusion

The Tenants' Application is dismissed. By operation of section 55 of the *Act*, the Landlord is granted an order of possession, which will be effective on April 30, 2017. The order of possession may be filed in and enforced as an order of the Supreme Court of British Columbia.

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 10, 2017

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Residential Tenancy Branch