



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing

A matter regarding FIBRO HOLDINGS LTD  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes: CNC-MT MNDCT OLC PSF

### Introduction

This hearing was convened as a result of the tenant's Application for Dispute Resolution (application) seeking remedy under the *Residential Tenancy Act* (the Act) for the following:

- to cancel a 1 Month Notice to End Tenancy for Cause dated October 25, 2022 (1 Month Notice),
- for more time to make an application to dispute the 1 Month Notice,
- for a monetary claim of \$418,
- for an order to compel the landlords to comply with the Act, regulation or tenancy agreement,
- for an order for the landlord to provides services or facilities.

The parties attended the teleconference hearing. At the start of the hearing, I introduced myself and the participants. The relevant parties were affirmed. Counsel was not affirmed as they are an officer of the court. The parties and counsel were provided with the opportunity to submit documentary evidence and submissions prior to this hearing. I have reviewed all oral and documentary evidence before me that met the requirements of the Residential Tenancy Branch (RTB) Rules of Procedure (Rules). However, only the evidence relevant to the issues and findings in this matter are described in this decision.

This matter was adjourned on March 30, 2023, which is explained in the Interim Decision dated the same date. The Interim Decision should be read in conjunction with this decision.

### Preliminary and Procedural Matters

As the tenant confirmed they do not have email, the decision will be sent to the tenant by regular mail. The decision will be sent by email to the landlord's counsel.

Although this hearing lasted 65 minutes on March 30, 2023 and an additional 63 minutes on May 15, 2023, I find that based on the admission of the tenant that it is not necessary to include all of the evidence presented over the two dates of this proceeding. The tenant admitted on May 15, 2023 that they smoke in the rental unit and have been doing so for 16 years and that the smoke smell is a result of their smoking. The tenant also admitted that the issue being alleged on the 1 Month Notice is due to their smoking, which is correct. As a result, I find that the witness testimony provided by the landlord's two witnesses and counsel's submission that there was a material breach of the tenancy agreement unnecessary to be considered further, for the reasons I will set out below.

### Issue to be Decided

- Should the 1 Month Notice to End Tenancy for Cause be cancelled?

### Background and Evidence

The tenant confirmed that they received the 1 Month on November 2, 2022 in their mailbox. The tenant filed to dispute the 1 Month Notice on November 10, 2022, which is within the 10-day timeline permitted under the Act. The tenant confirmed that the 1 Month Notice was signed and dated. A copy of the 1 Month Notice was submitted in evidence.

The 1 Month Notice lists the following 4 causes:

- ☐ Tenant or a person permitted on the property by the tenant has (check all boxes that apply):
- ☒ 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
- ☒ Breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.

The effective vacancy date indicated on the 1 Month Notice is listed as December 1, 2022, which has passed.

Counsel and the tenant referred to a Previous Decision dated September 21, 2022 (Previous Decision). The file number of the Previous Decision has been included on the cover page of this decision for ease of reference. The tenant stated they wish to rely on the facts discussed in the Previous Decision. The Previous Decision resulted in an earlier 1 Month Notice being cancelled relating to smoking for various reasons however the portion relating to significant interference or unreasonably disturbance of occupants the arbitrator wrote:

In relation to the Tenant significantly interfering with or unreasonably disturbing other occupants or the Landlord, I am not satisfied the Landlord has provided sufficient evidence of this. Again, this ground is a high bar to meet given the words “significant” and “unreasonable”. I place very little weight on the email complaints submitted because the Landlord has removed the names and unit numbers of the authors. In my view, the Tenant has a right to know who is making complaints against them so that they can adequately address the complaints. Further, it is difficult for me to determine the weight to give the complaints when I do not know details such as whether they are from one other tenant or multiple other tenants or from a next-door neighbour of the Tenant or someone who lives on the opposite side of the building from the Tenant. In the absence of compelling evidence from other tenants of the building, I am not satisfied the Tenant is interfering with or disturbing other tenants. Page: 6

The Landlord submitted statements from agents of the Landlord. Further, both the Agent and Witness testified about the effect of the Tenant smoking in the rental unit on them. However, I do not accept that the Tenant smoking in the rental unit amounts to a *significant* interference or *unreasonable* disturbance of agents for the Landlord because these individuals do not live in the building, and I do not find the stated effects to be serious enough when the agents are only intermittently at the building for work purposes. I decline to uphold the Notice based on significant interference or unreasonable disturbance.

[reproduced as written]

What sets this application apart from the Previous Decision is that the landlord has now submitted documents that were not redacted. Those complaints from other occupants of the rental unit are summarized as follows and only include those with their unit number included:

1.

Hi, Tania and Srishty from unit 222.

I don't want to make this complain but I think this is important to address.

I am writing this email to make a complaint about the smell of cigarettes and marijuana in the hallways. Whenever, I pass through the hallways it smells like cigarettes. With such a heavy cigarette scent, it suggests that someone smokes inside of the unit and it is really bothering us.

In addition, whenever I open my unit door to go into the hallways, the smell of cigarettes and Marijuana from the hallway enters my unit and I can not breath properly nor can I enjoy the time in my unit because of this.

This is unreasonably disturbing us and is also a health risk for us to inhale secondary smoke.

In addition, I have found out that one of the tenants in this building moved out because of the bad cigarette smell. This should not be the case as it already is difficult for people to find a place. Having to move because another tenant in the building chooses to smoke inside of their unit is not acceptable.

Please have this addressed so that we can continue our tenancy undisturbed.

Thank you

2.

We have been here since September last year and hoped the cigarette smell would go away and get better, but it has not improved which is why I am writing to you. Since the day we moved in, I have noticed that the hallways always smell like cigarettes and marijuana on an ongoing basis. Sometimes it smells stronger than other times.

The smell gets into our unit through and it bothers us when we are trying to eat or relax.

No one in our rental unit is a smoker and we believe that we should not have to deal with the smell.

Although your company as stated that you will be renovating the building and the hallways, I am afraid that even if you complete the renovations, it will continue smelling like cigarettes if whoever is smoking inside their unit does not stop. Anyone that thinks smoking inside the unit is ok, is quite disrespectful and inconsiderate towards their neighbors.

I would kindly like to ask you to deal with this issue as soon as possible as it affects our health and we cannot fully enjoy ourselves here if this is going to be an ongoing issue.

Thanks,  
Raj Sandhu  
Unit 215 on riverside Ave

3.

As you know I am in unit #221 moved in at the end of December. I often experience a strong cigarette smell in the hallway. Unfortunately I'm highly sensitive and allergic to it. It litterly makes me feel sick to my stomach.

It would be great if people would step outside to smoke. Hoping this issue can be resolved.

Thank you.  
Gail Blaney

In addition to the above, the landlord has provided colour photos showing many cigarettes and ash from inside the rental unit in an ashtray and staining and burn marks showing on the carpet of the rental unit.

The tenant claims they are not a heavy smoker but have been smoking for 16 years in the rental unit because the tenancy agreement does not prohibit smoking in the rental unit. The landlord submitted several warnings the tenant has been given and the tenant did not deny being given warnings by the landlord not to smoke in their rental unit.

### Analysis

Based on the documentary evidence and the testimony provided during the hearing, and on the balance of probabilities, I find the following.

Firstly, although the tenancy agreement does not include a non-smoking term, I find the tenant had admitted that they have been smoking inside the rental unit for 16 years and that there is sufficient evidence before me from at least three occupants/tenant of the rental building that are negatively impacted by the tenant's continued smoking.

Those tenants have the right to not be impacted by the tenant before and therefore, I find the tenant significantly interfered with or unreasonably disturbed other occupants of the rental unit. Therefore, I find the landlord has provided sufficient evidence to support that the 1 Month Notice is valid and that the tenancy must end to protect the health of other occupants who I find are suffering from the tenant's second hand smoke. While the tenant may not be breaching their tenancy agreement which does not prohibit smoking, I find the tenant's actions of smoking are unreasonably disturbing other occupants and that their health is significantly been impacted based on their witness statements which include names and unit numbers.

I find that the tenant has minimized the impact of their smoking and I prefer the evidence of the landlord over that of the tenant based on the totality of the evidence before me. I am also satisfied that the tenant has not provided any other plausible source of the smoke and therefore I find the tenant is responsible for the smoke in the hallway entering other rental units when they open their doors and is smelled in the hallway by the impacted occupants. I find the tenant's actions to be unreasonable given that they have been notified many times of the negative impact their smoking is having on others.

Section 55 of the Act applies and states:

### **Order of possession for the landlord**

**55(1)** If a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, **the director must grant to the landlord an order of possession of the rental unit if**

(a) **the landlord's notice to end tenancy complies with section 52 [*form and content of notice to end tenancy*], and**

(b) **the director, during the dispute resolution proceeding, dismisses the tenant's application or upholds the landlord's notice.**

[emphasis added]

I have reviewed the 1 Month Notice and find that it complies with section 52 of the Act. Therefore, I grant the landlord an order of possession pursuant to section 55 of the Act **effective May 31, 2023 at 1:00 p.m.** I have used this date as money for use and occupancy has been paid for May 2023.

I find the tenancy ended on December 1, 2022, which was the effective vacancy date listed on the 1 Month Notice.

This order must be served on the tenant and may be enforced in the Supreme Court of British Columbia.

### Conclusion

The tenant's application to cancel the 1 Month Notice to End Tenancy for Cause has been dismissed in full.

The 1 Month Notice issued by the landlords has been upheld.

The landlord has been granted an order of possession effective May 31, 2023 at 1:00 p.m. This order must be served on the tenant and may be enforced in the Supreme Court of British Columbia.

This decision will be emailed to the landlord and sent by regular mail to the tenant. The order of possession will be emailed to the landlord only for service on the tenant. The tenant can be held liable for all costs related enforcement of the order of possession if they fail to vacate by May 31, 2023 at 1:00 p.m., including court costs and bailiff fees.

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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: May 16, 2023

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Residential Tenancy Branch