

DECISION

Introduction

This hearing dealt with multiple applications from both parties including:

The Tenants' August 3, 2023, Application for Dispute Resolution under the Residential Tenancy Act (the "Act") for:

- an order requiring the landlord to comply with the Act, regulation or tenancy agreement under section 62 of the Act
- authorization to recover the filing fee for this application from the landlord under section 72 of the Act

The Tenants' September 21, 2023, Application for Dispute Resolution under the Residential Tenancy Act (the "Act") for:

- cancellation of the landlord's One Month Notice to End Tenancy for Cause (the One Month Notice) under section 47 of the Act
- an order to suspend or set conditions on the landlord's right to enter the rental unit under section 70(1) of the Act
- authorization to change the locks to the rental unit under section 70(2) of the Act
- authorization to recover the filing fee for this application from the landlord under section 72 of the Act

The Landlord's October 1, 2023, Application for Dispute Resolution under the Residential

Tenancy Act (the "Act") for:

- an Order of Possession based on a One Month Notice to End Tenancy for Cause (the One Month Notice) under sections 47 and 55 of the Act
- authorization to recover the filing fee for this application from the tenant under section 72 of the Act

Preliminary Matters

Judicial Review and Rehearing

A decision on this matter was rendered by the RTB on November 24, 2023; however the Tenant applied for a Judicial Review of this decision and on April 8, 2025, the matter was remitted to the Residential Tenancy Branch for a rehearing with a different arbitrator. As such this matter was reheard on July 18, 2025.

At the onset of the July 18, 2025, hearing, the parties were advised that in making my decision I would not be reviewing the submissions from the previous hearing and that any events or behavior that has occurred in the two years in which the previous decision was being considered by the Supreme Court would not be considered for this decision.

History of applications

At the time of the application the following previous applications existed:

- Hearing on June 13, 2023
 - For a 4-month Notice to End Tenancy dated January 28, 2023
- Hearing on September 15, 2023
 - For One Month Notices to End Tenancy Issued in June 2023
- Hearing scheduled for February 6, 2024
 - Tenant's request to challenge a two-month notice to end tenancy #910133501

Withdrawn matters

At the onset of the hearing the Tenant requested to withdraw the following applications:

- an order to suspend or set conditions on the landlord's right to enter the rental unit under section 70(1) of the Act
- authorization to change the locks to the rental unit under section 70(2) of the Act

Rule of Procedure 7.12.1, Removing claims made in the application at the hearing states

If an applicant requests that their application be amended to remove a claim at the hearing and the respondent consents to the amendment, the arbitrator's decision will record that the claim was withdrawn and the applicant can submit a new Application for Dispute Resolution for the withdrawn claim, unless otherwise agreed to by the parties.

The Landlord consented to the matters being withdrawn. The Tenant may make a new application for dispute resolution for the withdrawn claims if they feel it necessary.

Severed matters and Filing Fee

Rule of Procedure 2.3 states that claims must be related to each other. At the onset of the hearing the parties were advised that we would be focusing on the One-Month Notice to End Tenancy. Due to time constraints the parties were unable to make submissions in regard to the Tenant's following claim:

- an order requiring the landlord to comply with the Act, regulation or tenancy agreement under section 62 of the Act

The Tenant was agreeable to this matter being severed as he has made a similar application. The Tenant requested that the \$100.00 filing fee be refunded to him.

Subsection 59(4) of the Act states that the director may waive or reduce the fee if satisfied that (b) the circumstances do not warrant the fee being collected. I find that given the circumstances, the Tenant's request for a refund is reasonable and have requested that the Residential Tenancy Branch contact the Tenant to refund this amount.

Service

The tenant K.M. attended the hearing with their family. The landlord also attended the hearing. The parties acknowledged service of notice and evidence and were advised at the onset to advise if any evidence referenced during the hearing was unfamiliar.

Issues to be Decided

- Should the landlord's One Month Notice be cancelled? If not, is the landlord entitled to an Order of Possession?
- Is either party entitled to recover the filing fee for this application from the landlord?

Background and History

The residential property is a four-unit residential property, with two units on both floors. The tenants have resided within the residential property since 2015. The Landlord purchased the property in early 2021.

The parties signed a new tenancy agreement on June 1, 2021. This is a month-to-month agreement with rent currently set at \$1,121.02.

This Tenants originally occupied Unit C in the property, however, have since taken occupancy of Unit D.

The parties agreed that a One Month Notice to End Tenancy (the Notice) was issued to the tenant on September 16, 2023. This Notice identifies a stated move-out date of November 1, 2023, and was issued for reasons of:

- Tenant or a person permitted on the property by the tenant has
 - Significantly interfered with or unreasonably disturbed another occupant or the landlord

The Notice was issued in response to Tenant K.M.'s smoking on the deck of the property outside of their unit. The Landlord wrote the following as the reasons to issue the Notice:

As per Coquitlam City Bylaw No. 3037, 1996 I as the responsible parties must not permit or allow a person to smoke on common property with a penalty of up to \$10,000 per day if I am found liable.
The signed rental contract completed with the tenants on June 1, 2021 included the material addendum "10. Smoking – No smoking, of any kind, is permitted inside the building. The landlord reserves the right to designate a smoking area on the property"
The tenant has received both verbal and written notices outlining the designated areas and of breaches of both the bylaw and rental agreement resulting in an unreasonable disturbance for other occupants, their guests and the landlord which has not stopped even after the negative results of their actions was brought to their attention

Both parties made considerable submissions regarding matters that cannot be directly related to the Notice under dispute. They were informed that only the issues referenced in the Notice, specifically the allegation that the Tenant's smoking significantly interfered with and unreasonably disturbed another occupant or the landlord would be considered in making my determination.

Smoking Complaints and witness statements

The parties agreed that the Landlord's in-laws previously lived beneath the applicant Tenants for about six months before moving to the other lower unit (opposite of the tenants) in June 2023. The parties agreed that the in-laws have since moved out of the residential property.

It is undisputed that for a period of time the Landlord's in-laws acted in a property management capacity, attempting to enforce property rules, however it does not appear that they were fully empowered to act in a Landlord capacity. It is also undisputed that during this period there was high conflict between the Tenants and the in-laws, at times requiring the intervention of police. Some of this conflict was due to the smoking; however, the majority were for reasons outside of the Tenant's ongoing smoking.

The Landlord submitted evidence of several emails sent from their in-laws indicating that the Tenant's smoking was affecting their right to quiet enjoyment and their health. Along with the emails was a letter from their doctor indicating that the father in-law suffered from reactive airways and that "It would be in his best interest if he could avoid smoke and in particular to marijuana smoke."

The in-laws attended the hearing and gave affirmed testimony that the Tenant continuously smoked on his deck and that this negatively affected their living environment.

It is not disputed that both the in-laws and the Landlord made several attempts to address the Tenant's ongoing smoking.

A copy of the in-laws notice to end tenancy was submitted by the Landlord. C.V. confirmed that she had written it. The notice was provided on October 14, 2023, and states

"due to the ongoing and very unpleasant living conditions caused by the tenant in unit D (ie nuisance of their mismanaged dog, their smoking of cigarettes and marijuana on the porch and finally created false impressions of harassment with the RCMP.) We were paid a visit by officer (redacted) from the RCMP last week and he made it quite clear that if we do not stop our harassment of the tenants in unit D he will be forced to come back and arrest us so we can explain to a judge what is going on. So with all of this in our minds and the fact that my health is being affected in a very negative way we felt that we have no other option but to leave [...]"

The Tenants do not deny smoking on the deck during the period that the in-laws resided on the property, nor do they deny that the Landlord and in-laws attempted to force them to smoke in areas other than their deck. However, the Tenants submit that during this period, other tenants also smoked on the property, and that it is unlikely the smoke from their deck affected the in-laws to the extent they are claiming, as their unit was above, and smoke rises.

The Landlord submitted an Affidavit written by L.B. and commissioned on July 3, 2025, by B.M., legal counsel for the Landlord. L.B. resided at the rental property between 2005 and 2021, she resided in unit D throughout her tenancy. Unit D was beside the unit in which the Tenants previously resided in, and they shared a common deck. L.B. asserts the following in her Affidavit:

- Tenant K.M. would smoke on the deck constantly “throughout the day, every day”
- That she complained to the former landlord and asked K.M. to stop smoking on the patio but he refused
- That she suffered from migraines due to the smoking and “continued to be significantly disturbed and impacted by the smoking.”
- That K.M.’s smoking “prevented me from having the full use and enjoyment of the rental unit”
- That she had never made a formal complaint to the residential tenancy branch
- That as a result of her complaints to the current Landlord they attempted to ban smoking on the patio without success
- That as a result of the smoking she decided to end her tenancy

The Tenants submit that the previous landlord never informed them of any complaints made by L.B., nor did they have any conflicts with her during her tenancy. Furthermore, the Tenants question why, if their smoking allegedly had such a significant impact on L.B., she did not escalate the matter or pursue a formal resolution at the time, particularly in light of the Landlord's failure to address her concerns. Furthermore, the Tenants assert that numerous occupants smoked at the time of L.B.’s tenancy, and that one of the smokers lived directly below her. Therefore, L.B. cannot reasonably attribute her complaints solely to K.M.’s smoking.

The Landlord submits that he lost a contract with an insurance company for providing emergency housing to individuals. The Landlord states that the contract specified no smoking and that he was unable to meet this term due to the Tenant’s smoking. He provided a copy of the company’s standard tenancy agreement, which indicates no smoking. The Landlord noted that there were no complaints from the insurance company, as they did not wish to become involved.

Following the loss of the above-noted contract, new tenants moved into the unit above the in-laws. The Landlord submits that this was only for a few months and that, because the Tenants refused to stop smoking on the property, the new tenants also smoked on their deck. The Tenants submit that this tenant lived at the rental property for almost a year and that more than one individual residing in the unit would smoke on the deck above the in-laws.

Witness M.M. attended the hearing on behalf of the Tenants. M.M. lived at the rental property from July 2020 to April 2022. He ended his tenancy via mutual agreement, with the Landlord paying him \$8,500.00 to move out. M.M. submitted that he did not feel the Tenants were any issue during the time he lived at the property. He stated that they were quiet, clean, and did not disturb others. M.M. confirmed that during the period he lived at the residence, he and others would smoke outside and that he did not receive any complaints. He further elaborated that he would have conversations with the Landlord and in-laws while smoking, and they did not complain to him about this. M.M. submits that L.B. had made passive comments to him about the issue of smoke, but he was unaware of any actual complaints. He also submits that during his tenancy he observed K.M. smoking outside, and that K.M. had a routine of smoking twice per night after work. K.M. was not at the property during the day.

Analysis

Legal Framework

Section 47 of the Act provides that a Landlord may end a tenancy by giving notice to end the tenancy if (d)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.

Policy Guideline 55, *Ending a Tenancy for Cause: Significant Interference and Risk, Unreasonable Disturbance, Serious Jeopardy, and Extraordinary Damage*, provides that the legislation uses strong wording, like “significantly,” “unreasonably,” and “seriously,” to ensure that a landlord can only end the tenancy if the conduct in issue meets the above criteria.

To end a tenancy under this ground, the landlord must establish that:

- the tenant, or a person permitted on the property by the tenant, interfered with or disturbed the landlord or another occupant of the property and
- the interference was significant, or any disturbance was unreasonable.

This requires something more than the minor annoyances that ordinarily arise. The concept of unreasonable disturbance considers whether the action would disturb another “reasonable” occupant.

Assessing Credibility

R. vs Parent, 2000 BCPC 11, cites factors that the court recognizes as helpful in assessing credibility and weighing conflicting testimony. The following is a summary of the factors cited:

1. Witness' ability to observe the events, record them in memory, recall and describe them accurately,
2. External consistency of the evidence.

- Is the testimony consistent with other, independent evidence, which is accepted?
3. Internal consistency.
 - Does the witness' evidence change during direct examination and cross-examination?
 4. The existence of prior inconsistent statements or previous occasions on which the witness has been untruthful.
 5. "sense" of the evidence.
 - when weighed with common sense, does it seem impossible or unlikely? Or does it "make sense"?
 6. Motives to lie or mislead the court
 7. Attitude and demeanour of the witness

Cause Cited and Considered

The Landlord identified four factors in the details section of the Notice that they believed were relevant to ending the tenancy:

1. The existence of a city bylaw prohibiting smoking and the potential penalties to the Landlord for non-compliance.
2. The existence of a signed rental agreement allowing the Landlord to designate a smoking area on the property.
3. The fact that the Tenant has received numerous warnings regarding smoking outside the designated area, thereby breaching the bylaw and the rental agreement.
4. Unreasonable disturbance to other occupants.

However, the Notice to End Tenancy only specifies the following reason, allowable under the Act, for ending the tenancy:

- The tenant or a person permitted on the property by the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord.

The purpose of requiring the Landlord to provide full details on the Notice is to ensure that the Tenant has a fair opportunity to respond and dispute the reasons cited. Therefore, only the reason explicitly stated in the Notice can be considered. It would be a breach of procedural fairness to take into account any other factors that fall outside the legislated grounds specified in the Notice.

In light of this and given that the Notice is based solely on significant interference or unreasonable disturbance, I am unable to consider any submissions relating to any alleged breach of the Tenancy Agreement. Accordingly, items 2 and 3 listed above are

not relevant to the legislated allowable reason indicated within the Notice and will not be considered.

While a breach of bylaws may have the potential to pose a significant interference or unreasonable disturbance, the Landlord failed to show that the City had at any time become involved. Rather, the Landlord only submitted general laws inferring that they are applicable to this situation. In the absence of any warnings, fines or communications from the City I fail to see how this alleged breach would constitute a disturbance or interference to the Landlord or other occupants.

In- Laws Testimony

It is undisputed that the Landlord's in-laws submitted several complaints to the Landlord regarding the Tenant's smoking. However, after considering the submissions from both parties, I find that the in-laws failed to present a complete and balanced picture—specifically, they did not acknowledge that other tenants at the property were also smoking on the decks or near the entrances.

I accept that the in-laws were likely affected by the presence of smoke, and I do not question whether this interfered with their enjoyment of the property. However, I find it concerning that their complaints focused primarily on K.M.'s smoking while overlooking the smoking behavior of other tenants. This, combined with the significant interpersonal conflict between the parties at the time the complaints were made, leads me to conclude that the complaints were more likely than not biased and possibly intended to facilitate an eviction.

Furthermore, I find inconsistencies in C.V.'s testimony. In her statement, she claimed that her tenancy ended due to the Tenant's smoking. However, the Notice to End Tenancy sent by her to the Landlord, cites smoking as only one contributing factor, with the primary reason being that she had been warned by the RCMP that further conflict might result in criminal charges against her.

L.B. Affidavit

L.B. did not attend the hearing and therefore was unable to clarify or elaborate on her written statement.

In her statement, L.B. indicated that she had made several complaints to the previous Landlord regarding the Tenant's smoking. However, the Tenants denied ever receiving notice of any such complaints during L.B.'s tenancy. L.B. also stated that she did not escalate the matter, despite claiming that the Tenant's smoking had a serious impact on her health, well-being, and ability to enjoy her residence. I therefore place little weight on the statement provided. While I acknowledge that L.B. may have been impacted by smoking on the property—particularly if she was a non-smoker—the absence of any proof of past complaints specific to K.M.'s smoking, coupled with the fact that multiple tenants were known to smoke on the property during that time, leads me to conclude that it would be unreasonable to attribute significant disturbance solely to Tenant K.M.'s smoking.

M.M. Testimony

While a significant portion of M.M.'s statement consisted of personal opinions, I find that M.M. provided undisputed testimony establishing that smoking on the property and around the building was a common and accepted practice under the previous Landlords. He further confirmed that several other tenants, including himself, continued to smoke on the property during the period in question.

Summary

At the heart of this dispute is whether the Landlord has proven that the Tenant significantly disturbed or unreasonably interfered with the Landlord or other occupants by continuing to smoke on his deck. I find that the Landlord has not established this. During the period in question, other occupants were also smoking on the property, all within a small area. While I accept that the overall presence of smoking likely created an unpleasant environment for non-smokers, this does not mean the Tenant's smoking alone caused significant interference. Rather, it is more likely that the impact resulted from the cumulative effect of multiple people smoking on their decks and around the property. Notably, the only documented written complaint to the Landlord came from their in-laws, who had existing conflicts with the Tenant. Further, I find the animosity that existed between the Tenants and the in-laws who occupied the lower suite, exacerbated the conflict.

Conclusion

The One Month Notice to End Tenancy of September 16, 2023, is cancelled and of no force or effect.

The Tenancy is to continue until ended in accordance with the Act, regulations and Tenancy Agreement.

The Tenant's application for an order requiring the landlord to comply with the Act, regulation or tenancy agreement under section 62 of the Act is dismissed, with leave to reapply.

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: July 18, 2025

Residential Tenancy Branch