Phosy, Krisna LCTZ:EX

From: BC Non Profit Housing Association [admin@bcnpha.ca]
Sent: Wednesday, May 9, 2012 11:52 AM
To: Crane, Bob OHCS:EX
Subject: You are Invited to Attend BCNPHA's Implementing Smoke-Free Policies for Non-Profit Housing Providers Webinar

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BCNPHA
BC Non-Profit Housing Association

BCNPHA Education Services
Workshops, Consultations and Management Tools for the Non-Profit Housing Sector

Implementing Smoke-Free Policies for Non-Profit Housing Providers Webinar

Where:
Online at Clarity Conferencing

When:
Wednesday June 6, 2012 from 10:00 AM to 11:30 AM PDT
Add to my calendar

About the Presenter: Gene Chin is the Provincial Coordinator for the Clean Air Coalition of BC, which is comprised of the BC office of the Heart and Stroke Foundation and the BC Lung Association. The coalition, which has existed since 1998, strives to protect people from unwanted second hand smoke and its associated health risks, and help people who want to quit smoking. The current priorities of the coalition include increasing the number of smoke-free units in multiple-unit residential dwellings.

To this end, part of Gene's responsibility is jointly overseeing the Smoke-Free Housing BC website, which is the model used for similar websites that have since been

Dear Bob,

BC Non-Profit Housing Association Presents:

Implementing Smoke-Free Policies for Non-Profit Housing Providers Webinar

June 6, 2012 from 10 am to 11:30 am PST

Second-hand smoke travelling between units in multi-unit dwellings can be a real problem, unless a housing complex has a non-smoking policy. Second-hand smoke is not only a nuisance but a significant health concern for residents and can exacerbate existing medical conditions. Residents living in affordable housing tend to have the least amount of choice and mobility, so those experiencing unwanted second-hand smoke entering their homes have little recourse for addressing this problem. It is even a more difficult and problematic issue for those large number of people who live in affordable housing that already have health issues which require them to live in a smoke-free environment. That is why it's important that housing providers consider providing more smoke-free buildings for those who want and need to live without being exposed to this unhealthy and toxic substance in their own homes. This presentation provides further rationale for making more affordable housing go smoke-free and the steps to do so.

Who should attend? Non-profit housing providers/operators.

Webinar Fees: $50.40 for BCNPHA members; $95.20 for non-members. Fees include HST. Webinar fees are discounted thanks to in-kind sponsorship from Clean Air Coalition of BC. Pre-registration is required; payment may be made by cheque or credit card via Paypal (you do not require a

developed in Ontario and Quebec and currently under construction in Nova Scotia.

OTHER BCNPHA 2012 EDUCATION SESSIONS

Paypal account in order to pay by credit card).

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If you have any questions about the event or how to register, please contact:

Arwa Hasan, Liaison
BC Non Profit Housing Association
admin@bcnpha.ca
604 291 2600 Ext. 221
Toll free (BC) 1 800 494 8859 Ext. 221

Page 3 redacted for the following reason:
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Not Responsive

OHCS Residential Tenancy Office OHCS:EX

From: OHCS Residential Tenancy Office OHCS:EX
Sent: Thursday, January 26, 2012 8:57 AM
To: s.22
Subject: RE: smoking problem

Hello

Smoking inside a rental unit is not considered illegal. If the tenant has signed a contract that states that smoking is not permitted inside the unit then the landlord may issue a 1-month notice to end the tenancy for cause. If however, the landlord did not specifically state that smoking was not allowed in that unit, then the tenant may smoke.

You may wish to reach out to the landlord regarding cleaning of the common areas and see if there is anything that can be done to prevent the smoke from entering your unit.

Thank you,

Tamil Information Officer
Residential Tenancy Branch [RTB]
Office of Housing and Construction Standards
Ministry of Energy and Mines and the Minister Responsible for Housing

RTB offices are now open from 9 am to 4 pm.
Information and the E-Service for filing applications for dispute resolution are always available on our website at www.rto.gov.bc.ca

Please consider the environment before printing this email

From: s.22
Sent: Wednesday, January 25, 2012 12:53 AM
To: OHCS Residential Tenancy Office OHCS:EX
Subject: smoking problem

Hi there,

Help, how do i deal with a neighbor who smokes in his unit? Is it not illegal?
Both the building and my apartment smell bad and it's making me physically sick.

I understand that the manager talked to this man but the problem continues.

The address is s.22

Thanks,
s.22

OHCS Residential Tenancy Office OHCS:EX

From: OHCS Residential Tenancy Office OHCS:EX
Sent: Friday, January 27, 2012 8:58 AM
To: s.22
Subject: RE: smoking

Hello

Unless you are able to confirm that the tenant downstairs is actually smoking inside the unit, you are not able to do anything more.

Thank you,

Tami Information Officer
Residential Tenancy Branch [RTB]
Office of Housing and Construction Standards
Ministry of Energy and Mines and the Minister Responsible for Housing

RTB offices are now open from 9 am to 4 pm.
Information and the E-Service for filing applications for dispute resolution are always available on our website at www.rto.gov.bc.ca

Please consider the environment before printing this email

From: s.22
Sent: Thursday, January 26, 2012 9:12 AM
To: OHCS Residential Tenancy Office OHCS:EX
Subject: smoking

Hello

I am a landlord. I have tenants in the same building with one lives above one below in separate units. The lady upstairs says the lady downstairs is smoking marajauna in her apartment and it is coming into her suite upstairs and she is allergic to the smoke. This is a non-smoking building. I have spoken to the tenant downstairs asking her to please abide by the tenancy agreement and not smoke inside, she insists she doesn't. It doesn't smell like any kind of smoke in her apartment. I have no wish to evict anyone and have suggested to to the lady upstairs she should give notice if she is not happy.

Just wondering if I have any other responsibilites as the landlord to the women upstairs???

Thanks for your time look forward to hearing from you.

s.22

Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPC, FF

Introduction

This hearing was convened by way of conference call in repose to the landlord's application for an Order of Possession for cause and to recover the filing fee from the tenants for the cost of this application.

The tenants and landlord attended the conference call hearing, gave sworn testimony and were given the opportunity to cross exam each other on their evidence. The landlord provided documentary evidence to the Residential Tenancy Branch and to the other party in advance of this hearing. All evidence and testimony of the parties has been reviewed and are considered in this decision.

Issue(s) to be Decided

Is the landlord entitled to an Order of Possession based on the reasons given in the One Month Notice to End Tenancy?

Background and Evidence

Both Parties agree that this month to month tenancy started on November 01, 2010. Rent for this unit is $850.00 per month and is due on the first day of each month in advance.

The landlord testifies that the tenants were served a One Month Notice to End Tenancy on December 29, 2011 in person. This notice has an effective date of January 26, 2012 and gave the following reasons to end the tenancy:

1) 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,

2) The tenant or a person permitted on the residential property by the tenant has engaged in illegal activity that has

(i) Damage the landlords' property

(ii) 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, or

(iii) Jeopardized a lawful right or interest of another occupant or the landlord

The landlord testifies that he sent the tenants a face book message on September 20, 2011 about his concerns that the tenants or their guests have been smoking marijuana in or on the property (copy of message provided). The landlord testifies that either the tenants or their invited guests have been smoking marijuana in the unit or outside the unit and the smell of this illegal substance filters into the landlords unit above. The landlord testifies that this has significantly disturbed the landlord, his family and guests.

The landlord testifies that he has kept a note of the dates and times this occurs but has not provided this document in evidence. The landlord testifies he served the tenants with the Two Month Notice and an accompanying letter which notifies the tenants that they are receiving the eviction notice for repeated incidents of smoking marijuana in the suite. This is contrary to the tenancy agreement as well as the criminal code of Canada, damaging the premises, and violates the landlord's rights and those of the landlord's family to a reasonable quality of life.

The tenants testify that they did not know what reasons the landlord gave on the Notice as they only received page one of the Notice and the letter from the landlord informing the tenants they were being evicted for smoking marijuana. The tenant testifies that the second page they received was of recycled paper with an advertisement on it and was not the second page of the One Month Notice.

The tenants' testify that neither they nor their guests smoke marijuana in or on the premises. The tenant agrees that some of their guests do smoke marijuana but the tenant states these guests are not allowed to smoke on the property and are made to get into their cars and smoke elsewhere. The female tenant testifies that she does not even smoke cigarettes and if any friends come to visit and want to smoke a cigarette they have to smoke outside the unit.

The tenants testify that the neighbours in the adjacent property do smoke marijuana and suggest that the landlord smells the smoke coming from the neighbour's property.

Analysis

I have carefully considered all the evidence before me, including the sworn testimony of both parties. In this matter, the landlord has the burden of proof and must show (on a balance of probabilities) that grounds exist (as set out on the Notice to End Tenancy) to end the tenancy. This means that if the landlord's evidence is contradicted by the tenant, the landlord will generally need to provide additional, corroborating evidence to satisfy the burden of proof. The landlord has provided very little corroborating evidence to support his claim that the tenants are responsible for the smell of marijuana from either the tenants or their guests. It is not enough for the landlord to suspect the smell of marijuana is coming from the tenants unit and although the landlord testifies that he has documented the dates and times the landlord has not provided copies of this documentary evidence. Therefore in the absence of any significant corroborating

evidence, I find the landlord has not provided sufficient evidence to show that grounds exist to end the tenancy.

I am also not satisfied that the tenants were served a legal Notice to end the tenancy. In order for a legal notice to be valid and enforceable it must be complete. The landlord has provided two pages of the One Month Notice however the tenants' dispute that they received both pages and state the second page was a recycled advertisement. I also find the copy of the Notice I have been sent is unsigned by the landlord. Consequently, I cannot determine whether the tenants were served with the complete legal Notice.

As a result, the landlord has failed to meet the burden of proof as to the reasons on the Notice and failed to satisfy the burden of proof that a legal and enforceable Notice was served on the tenants. Therefore the Notice is cancelled and the tenancy will continue.

Conclusion

The landlord's application is dismissed in its entirety without 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 *Residential Tenancy Act.*

Dated: February 01, 2012.

Residential Tenancy Branch

BRITISH COLUMBIA
The Best Place on Earth

Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MNDC, ERP, RP, OLC, LRE, LAT, RR, and FF

Introduction

This hearing was scheduled in response to the Tenant's Application for Dispute Resolution, in which the Tenant has made application for a monetary Order for money owed or compensation for damage or loss; for an Order requiring the Landlord to make repairs to the rental unit; an Order requiring the Landlord to comply with the *Residential Tenancy Act (Act)* or the tenancy agreement; an Order suspending or setting conditions on the Landlord's right to enter the rental unit; an Order authorizing the Tenant to change the locks to the rental unit; authorization to reduce the rent for services and facilities agreed upon but not provided; and to recover the filing fee from the Landlord for the cost of this Application for Dispute Resolution.

Both parties were represented at the hearing. They were provided with the opportunity to submit documentary evidence prior to this hearing, to present relevant oral evidence, to ask relevant questions, and to make submissions to me.

At the hearing the Tenant withdrew the application for an Order authorizing the Tenant to change the locks to the rental unit and for an Order requiring the Landlord to make repairs to the rental unit.

The Landlord submitted documents to the Residential Tenancy Branch, copies of which were served to the Tenant. The Tenant acknowledged receipt of the Landlord's evidence and it was accepted as evidence for these proceedings.

The Tenant submitted documents to the Residential Tenancy Branch, copies of which were served to the Landlord. The Landlord acknowledged receipt of the Tenant's evidence, with the exception of four documents that summarize the Tenant's claims. All documents submitted by the Tenant, with the exception of the aforementioned four documents, were accepted as evidence for these proceedings. The Tenants were given the opportunity to testify regarding the content of the aforementioned four documents.

Although all documents submitted by the parties, with the exception of the aforementioned documents have been reviewed, they are not necessarily summarized in this decision.

Issue(s) to be Decided

The issues to be decided are whether the Tenant is entitled to financial compensation for the loss of the quiet enjoyment of their rental unit; whether there is a need for an Order requiring the Landlord to comply with the *Residential Tenancy Act (Act)* or the tenancy agreement; whether there is a need for an Order suspending or setting conditions on the Landlord's right to enter the rental unit; and whether the Tenant is entitled to recover the filing fee from the Landlord for the cost of this Application for Dispute Resolution.

Background and Evidence

The Landlord and the Tenant agree that this tenancy began on September 01, 2011 and that the Tenant currently pays monthly rent in the amount of $2,295.00.

The Landlord and the Tenant agree that there is a term in the Tenant's tenancy agreement that stipulates they are not permitted to smoke in their rental unit or on the residential property. The parties agree that they discussed smoking prior to the start of the tenancy and that the female Tenant specifically asked that this be included in the tenancy agreement.

The female Tenant contends that she was very clear that she wished to reside in a non-smoking complex. The Landlord contends that she did advise the female Tenant that the occupant of the lower unit did not smoke but she did not represent it as a non-smoking complex. The Landlord stated that neither the tenant who was living in the lower rental unit when this tenancy started nor the tenant who moved into the rental unit after this tenancy started had/have a clause that restricts smoking on the residential property.

The Landlord and the Tenant agree that the occupant of the lower rental unit moved into the rental unit on October 31, 2011, at which time he began smoking in the rental unit. The parties agree that the Tenant frequently complained to the Landlord regarding the second hand smoke; that the Landlord attempted to reduce the impact of the smoke by having the occupant of the lower unit smoke inside his bathroom with the fan running; and that the Tenant subsequently advised the Landlord that the problem persisted. The Landlord stated that the occupant of the lower rental unit has agreed to not smoke on the property and she believes this matter is now resolved. The Tenants agree that the occupant of the lower rental unit has not smoked on the residential property since December 16, 2011, except for one occasion.

The Tenant contends that they have exclusive use of a storage shed on the rental property and that an agent for the Landlord entered the shed without proper notice. The Landlord contends that the both the Landlord and the Tenant has the right to use the shed and that she stores her lawn mower in the shed, albeit the Tenant uses the lawn mower.

The Tenant submitted a letter from the individual who lived in the lower unit at the start of the tenancy, who stated that he did not have access to a basement storage area or the storage area that is accessible from the back yard, which were exclusively used by the upper tenants.

The Landlord and the Tenant agree that the Landlord entered the rental unit on the morning of December 01, 2011 and that the Landlord gave written notice, via email, on November 30, 2011. The Tenant contends that the email was sent at approximately 5 p.m. on November 30, 2011 and the Landlord stated that she cannot recall when it was sent.

The Tenant submitted numerous emails/text messages as evidence. I was unable to find any reference to the aforementioned notice however I did find a text message, dated October 04, 2011 at 3:55 p.m., in which the Landlord informs the Tenant that she needs access to the rental unit the following date at 10:00 a.m.

The Tenant is seeking compensation for the loss of the quiet enjoyment of the rental unit, in part, because of painting that occurred in the unit at the start of the tenancy. The Landlord and the Tenant agree that one wall in the "north" bedroom needed to be repaired and painted at the start of the tenancy and that the Landlord agreed to repair and paint that wall.

The female Tenant stated that once they took possession of the rental unit they also noticed that other areas in the rental unit needed painting because there were holes left from the previous occupant hanging items on the wall; that she asked the Landlord to paint other areas in the unit; that she asked the Landlord to change the color in the "north" bedroom; that the Landlord agreed to paint additional areas in the rental unit;

that the Landlord did tell her that she would be out of town and could not oversee the painting; that she assumed the Landlord would have an agent oversee the painting; that she never agreed to oversee the painting; that she told the painter where to store his supplies; that the painting in the bedroom was complete by September 15, 2011; and that the painting in the rest of the unit was complete by September 23, 2011.

The Landlord stated that the rental unit had been painted recently and did not need repainting, even though there were some holes in the walls from the previous occupants hanging items on the wall; that she agreed to repaint a variety of areas in the rental unit at the request of the Tenant; that she only intended to paint one wall in the "north" bedroom but, at the request of the Tenant, she painted the entire room and changed the color; that she told the Tenant that she was going to be away and could not oversee the painting; that the Tenant agreed to purchase the paint and oversee the work; and that the painting in the unit was complete by September 23, 2011.

The Tenant contends that the painting was very disruptive and interfered with their ability to fully use the rental unit. The Tenant contends that they could not use the "north" bedroom until September 15, 2011 and that they could not use the foyer until September 23, 2011. The Landlord argued that the photographs submitted by the Tenant clearly show that they were using the foyer to store personal items.

The Tenant submitted photographs that show their belongings are stored in a manner that would accommodate painting and that painting supplies were stored in various areas of the home. The Landlord contends that the painter would have moved his supplies to any area in the house if he had been asked to do so by the Tenant.

The Landlord submitted a letter from the individual who painted a portion of the rental unit, in which he stated that he had almost finished painting when the female Tenant spoke with him in a manner he did not appreciate so he left the unit and did not complete the job. The Landlord declared that she had to find someone else to complete the painting, which contributed to the delay in completing the painting.

Both parties submitted photographs of the rental unit prior to the tenancy beginning. In my view these photographs show that the interior paint was in reasonably good condition and that it did not require painting.

The Tenant is seeking compensation for the loss of the quiet enjoyment of the rental unit, in part, because the current occupant of the lower rental unit is disturbing them. The Tenant contends that the occupant of the lower unit, who moved into his unit on November 01, 2011, has repeatedly complained about noise emanating from the rental unit; that he has repeatedly complained that they use an excessive amount of hot water; that the relationship between them and the occupant of the lower unit has deteriorated to the point that he yells profanities at them through the floor and bangs on the floor; and that on December 10, 2011 the occupant of the lower unit damaged their personal property, for which he was arrested.

The Landlord contends that she has received numerous complaints about the Tenants from the occupant of the lower unit and numerous complaints about the occupant of the lower rental unit from the Tenant. She stated that she has spoken with both parties regarding the complaints; that neither party accepts responsibility for the conflict; and that she believes both parties are contributing to the conflict. The Landlord submitted a letter she provided to the Tenant, dated December 16, 2011, in which she advised the Tenant that the occupant of the lower unit has been agreed to have no further contact with them; in which she directed the Tenant to have no further contact with the occupant of the lower rental unit; and in which she advised the Tenant she would act as an intermediary.

The Tenant contends that the complaints from the lower occupant are simply normal daily living activities; that the noise is exacerbated because the house is poorly insulated; and they should not be required to curtail normal daily living activities. The Tenant believes that the Landlord should advise the occupant of the lower unit to stop complaining.

The Tenant submitted copies of several text messages that the Tenants exchanged with the occupant of the lower rental unit, in which both parties complain of being disturbed by the other party.

Analysis

I find that the female Tenant very clearly expressed her desire to live in a non-smoking complex and that the Landlord implied that this residential complex was non-smoking. In reaching this conclusion, I was heavily influenced by the fact the parties agree they discussed smoking; that the Landlord advised the Tenant that the other tenant living in the residential complex did not smoke; and that the Landlord included a clause in the Tenant's tenancy agreement that prohibited smoking on the property. Although the Landlord did not specifically advise the Tenant that other persons were prohibited from smoking on the rental unit, I find that it was reasonable for the Tenant to conclude, on the basis of the Landlord's words and actions, that smoking was prohibited on the residential property.

I find, however, that the Landlord does not have the right to prevent the tenant in the lower rental unit from smoking on the residential property, as that tenant does not have a similar restriction in his tenancy agreement. I find that the Landlord has acted reasonably and responsibly in response to the Tenant's concerns regarding smoking and it appears that the occupant of the lower rental unit has agreed to refrain from smoking on the property.

Section 27(1) of the *Act* stipulates that a landlord must not terminate or restrict a service or facility if the service or facility is essential to the tenant's use of the rental unit

as living accommodation or is a material term of the tenancy agreement. Although the issue of smoking is of such importance to these Tenants that it is likely a material term of their tenancy, I find that it may be impossible for the Landlord to provide a non-smoking environment to the Tenant, given that she cannot legally prevent the lower occupant from smoking.

Section 27(2) of the *Act* stipulates that a landlord may terminate or restrict a service or facility, other than one referred to in subsection (1), if the landlord gives 30 days' written notice, in the approved form, of the termination or restriction, and reduces the rent in an amount that is equivalent to the reduction in the value of the tenancy agreement resulting from the termination or restriction of the service or facility.

As the Landlord cannot legally prevent the lower occupant from smoking I find, in these unique circumstances, that the Landlord must compensate the Tenant in an amount that is equivalent to the reduction in the value of the tenancy agreement as a result of the occupant in the lower rental unit smoking on the property. I find that the tenant smoking in the lower unit reduces the value of this tenancy by $75.00 per week. This value is obviously subjective. This award is somewhat higher than I would typically award however the amount is based, in part, on the fact that the matter is clearly very important to the Tenant and they made that clear to the Landlord at the start of the tenancy.

I find that the Tenant is entitled to compensation, in the amount of $450.00, for the period between November 01, 2011 and December 16, 2011 when the occupant of the lower unit was smoking in his rental unit. In the event the occupant continues to smoke on the residential property, I find that the Tenant has the right to deduct $75.00 for any week in which the occupant of the lower unit smokes on the property in a manner that disturbs the Tenant, providing the Landlord agrees the lower occupant has smoked in a manner that disturbs the Tenant during the week in question. In the event the Landlord does not agree that the occupant of the lower unit has smoked in a manner that disturbs the Tenant during any given week, the Tenant has the right to file another Application for Dispute Resolution seeking compensation for this matter.

I find that the Tenant has submitted insufficient evidence to show that they have exclusive use of a storage shed on the property. In reaching this conclusion I was heavily influenced by the fact that this issue is not outlined in the tenancy agreement, which quite clearly specifies a variety of services and facilities provided to the Tenant. I find it entirely possible that when the Landlord told the Tenants that they could use the storage area the Tenants simply assumed this meant they had exclusive use of the area.

In making this determination I have placed little weight on the letter from the individual who lived in the lower rental unit. While I accept that he did not have the right to access the storage area in question, I find that I have no evidence that he understood the agreement between the Landlord and the former upper tenants. Even if he did know

that the former upper tenants had exclusive use of a particular storage area, this does not mean that the Landlord entered into the same agreement with her new tenants.

On the basis of the testimony of the Tenant and the text message, dated October 04, 2011 at 3:55 p.m., in which the Landlord informs the Tenant that she needs access to the rental unit the following date at 10:00 a.m., I find that the Landlord may not be strictly complying with section 29 of the *Act.* I therefore Order the Landlord to strictly comply with section 29 of the *Act*, which reads:

> *A landlord must not enter a rental unit that is subject to a tenancy agreement for any purpose unless one of the following applies:*
> *(a) the tenant gives permission at the time of the entry or not more than 30 days before the entry;*
> *(b) at least 24 hours and not more than 30 days before the entry, the landlord gives the tenant written notice that includes the following information:*
> *(i) the purpose for entering, which must be reasonable;*
> *(ii) the date and the time of the entry, which must be between 8 a.m. and 9 p.m. unless the tenant otherwise agrees;*
> *(c) the landlord provides housekeeping or related services under the terms of a written tenancy agreement and the entry is for that purpose and in accordance with those terms;*
> *(d) the landlord has an order of the director authorizing the entry;*
> *(e) the tenant has abandoned the rental unit;*
> *(f) an emergency exists and the entry is necessary to protect life or property.*

The *Act* establishes a tenant's right to quiet enjoyment, which includes, but is not limited to, reasonable privacy, freedom from unreasonable disturbance, exclusive possession, subject to the landlord's right of entry under the Legislation, and use of common areas for reasonable and lawful purposes, free from significant interference.

While I accept that the Tenant's use of the rental unit was disrupted for the first 23 days of this tenancy as a result of painting, I do not find that the disruption constitutes a breach of their right to quiet enjoyment. In reaching this conclusion I was influenced by the following findings:

- With the exception of one wall in the north bedroom all of the painting in the unit was completed at the request of the Tenant
- Had the Tenant not requested additional painting, the painting would have been limited to one wall and would, quite likely, have been completed within a reasonable time
- The photographs before me do not cause me to conclude that the rest of the rental unit required painting

- Although the Tenant was disrupted by the painting, they benefitted significantly from the painting
- The Tenant could have minimized the disruption by insisting that the painter store his supplies in a particular area of the rental unit
- The Tenant contributed to the delay, to some degree, by interacting with the first painter in such a manner that he left the site before completing the painting.

As I have found that the painting did not constitute a breach of the Tenant's right to the quiet enjoyment of their rental unit, I dismiss their claim for compensation for this inconvenience.

The Residential Tenancy Branch Policy Guidelines suggest that inaction by the landlord which permits or allows physical interference by an outside or external force which is within the landlord's power to control could be considered a breach of the right to quiet enjoyment. I concur with this guideline. In these circumstances, I find that the Landlord has taken reasonable steps to intervene in the dispute between the parties but has been unable to resolve the conflict. I am not convinced that it is within her power to resolve this conflict, as the parties do not seem to be inclined to live cooperatively.

When one party is clearly disturbing another party a landlord generally has an obligation to end that party's tenancy. In these circumstances, however, I find that, until recently, it would be difficult, if not impossible, for the Landlord to end the tenancy of either party. I accept that the occupant of the lower rental unit has disturbed the Tenant by yelling and banging. On the basis of the texts exchanged between the parties, I find that the Tenant has also disturbed the occupant of the lower rental unit and that his actions have been in response to his perception that the Tenant is not responding appropriately to his complaints.

Although inadequate insulation between the floors and a small hot water tank may contribute significantly to the disturbances, I find those deficiencies are not uncommon in a home of this era and I find it was reasonable for the occupant of the lower rental unit to expect the Tenants to modify their behaviour in an attempt to minimize the disturbances.

As the occupant of the lower rental unit has an equal right to the quiet enjoyment of his rental unit, I find it unreasonable for the Tenant to expect that the Landlord should direct the lower occupant to simply stop complaining. Rather, I find the Landlord acted reasonably and responsibly when she directed the parties to stop communicating with each other and to use her as an intermediary. As the Landlord has acted reasonably and responsibly in this matter, I find that she cannot be held liable for the disturbances. I therefore dismiss their claim for compensation for disturbances arising from the conflict between the two parties.

I do note that the Landlord may have grounds to end the tenancy of the lower occupant if it can be established that he damaged personal property belonging to the Tenant. I have not taken this incident into account when determining whether the Landlord acted responsibly in this matter, as this is a relatively recent development and I have no indication that evidence supporting the allegation was provided to the Landlord prior to December 20, 2011, when evidence for these proceedings was served to her.

I find that the Tenant's Application for Dispute Resolution has some merit and I find that the Tenant is entitled to compensation, in the amount of $50.00, for the cost of filing this Application for Dispute Resolution.

Conclusion

I find that the Tenant has established a monetary claim, in the amount of $500.00, which is comprised of $450.00 in compensation for not being provided with a smoke free environment and $50.00 in compensation for the filing fee paid by the Landlord for this Application for Dispute Resolution.

In full satisfaction of this monetary claim, I authorize the Tenant to reduce their rent payment in February of 2012 by $250.00 and their rent payment in March of 2012 by $250.00, pursuant to section 72(2) of the *Act*.

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: December 30, 2011.

Residential Tenancy Branch

Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

MNDC, FF

Introduction

This matter was convened to hear the Tenants' application for monetary compensation for damage or loss under the *Residential Tenancy Act* (the "Act"), regulations or tenancy agreement; and to recover the cost of the filing fee from the Landlord.

Both parties signed into the Hearing and were provided the opportunity to make relevant submissions, in writing and orally pursuant to the Rules of Procedure, and to respond to the submissions of the other party.

Issue(s) to be Decided

1. Have the tenants established an entitlement to compensation for damage or loss under the Act, regulations or tenancy agreement pursuant to the provisions of Section 67 of the Act?

Background and Evidence

This tenancy commenced July 15, 2011. Rent is $1,520.00 per month, due on the first day of each month. The Tenants paid a security deposit in the amount of $760.00 at the beginning of the tenancy.

The residential property contains two towers, one with 29 floors and the other with 24 floors. The residential property was built in the 1970s. The rental unit is located on the second floor of the 29 storey tower.

The Tenants gave the following testimony

The Tenants seek compensation in the amount of $1,600.00 on their Application for Dispute Resolution. The Tenants submitted that they were misled when they signed the tenancy agreement. They testified that they were excited when they viewed the suite

because of the large patio area. They stated that when they saw the patio they commented that the current occupants must smoke a lot because of the number of cigarette butts on the patio. They stated that the Landlord's agent who showed them the rental unit simply muttered, but did not tell them that debris is commonly thrown from the suites above. The Tenants submitted that if they knew this, they would not have agreed to rent the suite.

The Tenants testified that since they moved in, bags of garbage, cigarette butts, a coffee percolator, and gobs of spit and other debris have all fallen on the patio from the suites above. They stated that they cannot use the patio for health and safety reasons, and that they have therefore lost enjoyment of a portion of their rental unit. The Tenants provided photographs of some of the debris.

The Tenants testified that they wrote to the Landlord on September 14, 2011, complaining about the garbage that was being thrown from above. They stated that they asked the Landlords to provide a barrier, such as an awning, over their patio but the Landlord has refused. They stated that the Landlord has issued a notice to all of the occupants in the building to stop throwing articles off their balconies, but that the notice has been ineffective. The Tenants testified that their neighbours recently moved out of the building because they were hit by falling garbage.

The Tenants stated that they would like to move to a different suite in the rental building but cannot afford the moving costs. They stated that the $1,600.00 that they are seeking in compensation is what they estimated would be the approximate cost for moving. Since filing their application, they have received an estimate from a moving company in the amount of $1,347.36. A copy of the estimate was provided in evidence.

The Tenants stated that if another suite became available, they would also expect free storage (the upper units are smaller) and the Landlord to waive the transfer fee.

The Landlord's agents gave the following testimony

The Landlord's agents denied that the leasing agent had misrepresented the rental unit to the Tenants. They submitted that the Tenants were not used to living in a high rise building and that it is normal for debris to fall off balconies above or be blown around by the wind.

The Landlord's agents stated that they sent out memos to all occupants in the building stating that people who were found to be responsible for throwing debris off their balconies would be evicted.

The Landlord's agents stated that they replied to the Tenant's complaint letter on September 19th and offered another suite on a higher floor at market rent ($1,685.00), stating that they would provide one free storage unit and would waive the transfer fee. The Landlord's agents stated that the Tenants did not accept this offer. The Landlord's agents testified that putting up an awning would be cost prohibitive because of the size of the patio area.

The Landlord's agents stated that the Tenants approached the Landlord's leasing agent, complaining about the garbage and a few other issues. They stated that they made another offer to the Tenants. They stated that they offered the Tenants another suite on the 10th floor at market rent ($1,620.00) if they agreed to sign a new lease for 6 months to a year and that they offered to waive the transfer fees and provide them free storage for the term of the lease. The Landlord's agents testified that the Tenants refused their offer.

The Landlord's agents testified that there are 12 other occupants on the same floor as the Tenants and that some occupants had been living at the rental property since 1994; 2004 and 2009. They stated that none of the other occupants have complained about debris falling from upper floors.

The Landlord's agents testified that the Tenant's patio is approximately 50 ft x 8 ft (400 square feet) and that the inside of the rental unit is approximately 1100 to 1200 square feet.

Analysis

Section 28 of the Act provides that a tenant is entitled to quiet enjoyment of the rental unit.

Section 7(1) of the Act provides that if a landlord does not comply with the Act, the regulations or the tenancy agreement, the non-complying landlord must compensate the tenant for the damage or loss which results.

Section 67 of the Act provides that if damage or loss results from a party not complying with the Act, the director may determine the amount of, and order that party to pay, compensation to the other party.

This is the Tenant's claim for damage or loss under the Act and therefore the Tenant has the burden of proof to establish their claim on the civil standard, the balance of probabilities.

In this situation, to prove a loss and have the Landlord pay for the loss requires the Tenant to prove, on the balance of probabilities, that they have suffered a loss because of the actions or neglect of the Landlord in violation of the Act.

Based on the testimony of both parties, I do not find that the Landlord's agent made misrepresentations when the Tenants viewed the rental unit. A misrepresentation would have been telling the Tenants that no debris ever fell from above onto their patio, which the Landlord's agent did not do.

However, I do not accept the Landlord's agent's submission that the debris shown in the Tenant's photographs could have been blown in by the wind, or simply "fallen" from above. The pictures show a kitchen-sized bag of garbage, a mop, an empty food box, a cigarette package, cigarette butts, a Styrofoam meat tray, phlegm, and egg shells.

I note that the Landlord provided the Tenants with two offers to move to other suites, but that both suites were for considerably higher rent.

The Landlord's agents testified that they had provided memos to all occupants of the building warning them not to throw items from their balconies, but provided no further evidence that they had attempted to discover who is responsible. Instead, the Landlord's agents submitted that they believed that falling debris was a normal occurrence in high rise living.

I find it unlikely that the items shown in the Tenant's photographs, with the exception of perhaps a few cigarette butts, could have simply "fallen" from balconies above, or been blown onto the Tenant's patio by the wind. I find it probable that they have been deliberately thrown from above and that the Landlord has not been reasonably diligent in its attempts to prevent this from reoccurring.

The Landlord's agents testified that no other occupants on the same floor as the Tenants had complained about falling debris, and therefore a good place to start would be to investigate occupants above the Tenants who moved into the residential property at about the same time or after the Tenants.

I accept the Tenants' evidence that they do not have quiet enjoyment of the patio because of the Landlord's neglect in violation of Section 28 of the Act. Therefore, I grant the Tenants compensation in the form of a **rent reduction in the amount of $50.00 per month** until the Landlord is successful in discovering who is throwing items onto the Tenant's patio and causing it to cease.

This rent reduction is effective February 1, 2012, and will continue until the Landlord files an Application for Dispute Resolution and is successful in proving that it has taken reasonable steps to ensure that other occupants refrain from dropping cigarette butts, garbage and spitting onto the Tenant's patio.

The Tenant's application had merit and I find that they are entitled to recover the cost of the filing fee from the Landlord. Pursuant to the provisions of Section 72 of the Act, the Tenants may deduct **$50.00** from future rent due to the Landlord. For clarification, rent for the month of February, 2012, will be $1,420.00. Rent for the month of March, 2012, will be $1470.00.

Conclusion

The Tenants may deduct the cost of the **$50.00** filing fee from future rent due to the Landlord.

Effective February 1, 2011, the Tenants' rent is reduced by **$50.00** per month until the Landlord has filed an Application for Dispute Resolution and is successful in obtaining an Order from a Dispute Resolution Officer to cancel the rent reduction.

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: January 20, 2012.

Residential Tenancy Branch

Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: *MND, MNDC, FF*

Introduction

This hearing dealt with an application by the Landlord pursuant to the *Residential Tenancy Act* for a monetary order to recover the costs of cleaning and repair to the rental unit and for the filing fee.

Both parties attended the hearing and were given full opportunity to present evidence and make submissions.

Issues to be decided

Has the landlord established a claim for costs incurred to repair and clean the rental unit? Is the landlord entitled to recover the filing fee?

Background and Evidence

The tenancy started on August 31, 2010 and ended on November 01, 2011. The monthly rent was $1,100.00 per month. Prior to moving in the tenant paid a security deposit in the amount of $550.00.

A move in inspection report was filed by the landlord. No discrepancies were noted. The tenant signed the report which also contained a statement regarding smoking not permitted inside the home.

The landlord stated that at the end of tenancy, smoke damage was visible throughout the unit and filed photographs to support her testimony. The tenant denied having smoked inside the home and stated that the discoloration on the blinds, carpet, vents, doors, walls etc. was due to either smoke from the fireplace or from the previous tenant.

In reply to the tenant's evidence, the landlord filed receipts and invoices to show that the fireplace and the unit were professionally cleaned, at the start of the tenancy and pointed out that there was no mention of stains or dirt on the move in inspection report.

The landlord filed invoices to support a major portion of her monetary claim. The landlord had to hire a professional company to clean and deodorize the unit to rid it of smoke damage, discoloration and odour.

The landlord also claimed $500.00 to replace a portion of the siding that was damaged by the tenant's son. The landlord accepted the tenant's offer of $200.00 towards her claim.

The landlord stated that the tenant gave notice to move on September 30, 2011 with an effective date of November 01, 2011, and used the security deposit as rent without the landlord's consent. The tenant did not dispute this.

The landlord is claiming the following:

1.	Unpaid Rent	$550.00
3.	Labour to steam clean carpet and neutralize smoke damage	$455.50
4.	Repair siding	$500.00
5.	Repair bedroom closet	$25.00
6.	Grass seed and fertilizer	$100.00
	Total	**$2,218.50**

Analysis

The tenant agreed that she had not paid rent for half the last month of the tenancy and therefore owes the landlord $550.00 towards unpaid rent.

Based on the verbal testimony and documentary evidence, I find that the unit was professionally cleaned prior to the tenancy. The photographs show that the presence of stains, discoloration and dust in the unit and the invoices support the expense incurred by the landlord to clean and rid the unit of smoke damage. Accordingly, I find that the landlord has established a claim for the cost of labor to wash walls, steam clean the carpet, neutralize smoke damage and for the use of the Ozone machine.

The tenant agreed to pay $200.00 toward the repair of the siding and the landlord accepted this offer.

The landlord did not file any evidence to support her claim to repair the bedroom closet and for grass seed and fertilizer and therefore I dismiss these claims.

I find that the landlord has established the following claim:

1.	Unpaid Rent	$550.00
3.	Labour to steam clean carpet and neutralize smoke damage	$455.50
4.	Repair siding	$200.00
5.	Repair bedroom closet	$0.00
6.	Grass seed and fertilizer	$0.00
	Total	**$1,793.50**

Since the landlord has proven a major portion of her claim, she is also entitled to the recovery of the filing fee of $50.00.

Overall, I find that the landlord has established a claim for $1,843.50. I order that the landlord retain the security deposit of $550.00 and accrued interest of interest of $0.00 in partial satisfaction of the claim and I grant the landlord an order under section 67 of the *Residential Tenancy Act* for the balance due of $1,293.50. This order may be filed in the Small Claims Court and enforced as an order of that Court.

Conclusion

I grant the landlord a monetary order for **$1,293.50.**

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: January 03, 2012.

Residential Tenancy Branch

Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC

Introduction
This hearing dealt with the tenant's application pursuant to section 47 of the *Residential Tenancy Act* (the *Act*) for cancellation of the landlord's 1 Month Notice to End Tenancy for Cause (the 1 Month Notice). Both parties attended the hearing and were given a full opportunity to be heard, to present evidence and to make submissions. The tenant confirmed that the landlord's male representative handed him a copy of the 1 Month Notice on December 13, 2011. The landlord's representative at this hearing confirmed that the landlord received a copy of the tenant's dispute resolution hearing package by registered mail after December 15, 2011. I am satisfied that both of the above sets of documents were served to one another by the parties in accordance with the *Act*.

At the commencement of the hearing, the landlord asked for an Order of Possession if the tenant's application to cancel the 1 Month Notice were dismissed.

Issues(s) to be Decided
Should the landlord's 1 Month Notice be cancelled? If not, is the landlord entitled to an Order of Possession?

Background and Evidence
This dispute involves a tenant in a single room occupancy hotel and the owner of that establishment. The tenant applied to cancel the landlord's 1 Month Notice because he did not understand the reasons cited by the landlord for the issuance of that Notice.

Although only one page of the landlord's 1 Month Notice was entered into written evidence by the parties (i.e., by the tenant), the landlord testified that the second page of the 1 Month Notice identified the following reasons for the issuance of the 1 Month Notice and seeking an end to this tenancy on February 1, 2012:

Tenant or a person permitted on the property by the tenant has:

- *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;...*

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;..*

At the hearing, the landlord's representative testified that the illegal activity in question was the tenant's alleged smoking of marijuana in his rental unit. The landlord conceded that she has no evidence that the tenant has been convicted of any criminal offence for activity undertaken at the rental premises.

Analysis

Pursuant to section 63 of the *Act,* the dispute resolution officer may assist the parties to settle their dispute and if the parties settle their dispute during the dispute resolution proceedings, the settlement may be recorded in the form of a decision or an order. During the hearing the parties discussed the issues between them, engaged in a conversation, turned their minds to compromise and achieved a resolution of their dispute.

Both parties agreed to resolve the issues arising out of this tenancy on the following terms:

1. Both parties agreed that this tenancy will end by 1:00 p.m. on February 1, 2012, by which time the tenant will have vacated the rental premises.
2. Both parties agreed that this settlement resolved all outstanding issues in dispute between them arising out of this tenancy at this time.

Conclusion

To give effect to the settlement reached between the parties and as discussed at the hearing, I issue the attached Order of Possession to be used by the landlord if the tenant does not vacate the rental premises in accordance with their agreement. Should the tenant fail to comply with this Order, this Order may be filed 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: January 12, 2012

Residential Tenancy Branch

Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPC, OPR, MNR, MNSD, FF

Introduction

This hearing dealt with an application by the landlord for an order of possession for cause, an order of possession for unpaid rent, a monetary order for unpaid rent, to keep all or part of the security deposit and recovery of the filing fee. Both parties participated in the conference call hearing.

Issue(s) to be Decided

Is the landlord entitled to any of the above under the Act.

Background and Evidence

This tenancy began May 1, 2009 with monthly rent of $900.00 and the tenants paid a security deposit of $450.00.

On November 30, 2011 the landlord served the tenants with a 1 Month Notice to End Tenancy for Cause:

The tenants have:

- seriously jeopardized the health or safety or lawful right of another occupant or the landlord.
- adversely affected the quiet enjoyment, security, safety or physical well-being of another occupant or the landlord.
- jeopardized a lawful right or interest of another occupant or the landlord.
- breached a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so;.

The landlord stated that the tenants brought a cat on to the property and the tenancy agreement states no pets. On November 30, 2011 the landlord gave the tenant a written warning notice that the cat had to be removed from the rental unit or the tenant would be in breach of the rental agreement. On that same day the landlord gave the tenants

the 1 month notice to end tenancy for cause due the presence of the cat on the property and one of the tenants smoking marijuana on the property.

The landlord's witness testified that they observed the cat on the property on November 30, 2011 and that the tenant's daughter had a photo of the cat on her Facebook page. The landlord and witness both stated that they had not observed the cat at the rental unit since November 30, 2011.

The tenant stated that there had been a cat on the property on November 30, 2011 and that it belonged to her brother. The tenant maintained that she was only looking after the cat and the cat was taken back to her brother's on November 30, 2011 after she was advised by the landlord that it could not remain in the rental unit.

The landlord stated that on December 12, 2011 the tenants were provided with a demand letter as the utilities in the amount of $154.47 were unpaid and this letter also warned the tenants to stop smoking marijuana in the rental unit. The landlord stated that a strong odour of marijuana was present when she was at the rental unit on December 12, 2011 however the tenant denied that anyone was smoking marijuana in the rental unit on that day. The landlord stated that they continue to have difficulty renting the lower unit in the house due to the tenants smoking marijuana.

The tenant stated that the second tenant named in this application is a friend and does not reside with the tenant. The tenant stated that it is her friend who occasionally smokes marijuana at the rental unit but that this has stopped since the tenant received the December 12, 2011 warning letter.

The tenant stated that she had attempted to pay the January 2012 rent but that the landlord had refused it. The tenant stated that she would also have the money for the utilities on January 6, 2012.

The tenant stated that she believed the problem with renting the lower unit was due to how easily sound travelled between the 2 rental units. The tenant stated that most of the floors in her unit are wood floors and that if the floors were carpeted is would help to buffer the noise for the downstairs unit. The tenant stated that if she didn't have a tv or radio on she would be able to easily hear the tenants in the lower rental unit.

Analysis

Based on the documentary evidence and testimony of the parties, I find on a balance of probabilities that the landlord has not met the burden of proving that they have grounds to have the notice to end tenancy for cause upheld and are entitlement to an order of possession.

The landlord gave the tenant both a warning notice and notice to end tenancy on November 30, 2011 and the tenant corrected the issue of having a cat on the property that same day; the landlord at this time had no evidence that the cat remains on the property. And while the tenant may have been in breach of the tenancy agreement on November 30, 2011, a tenant must be allowed time to correct the breach before the landlord moves to evict the tenant.

The tenant also maintains that her friend no longer smokes marijuana in the rental unit and the tenant needs to ensure that consumption of marijuana not only does not occur in the rental unit but also does not occur on the landlord's property.

The tenant understands that if presence of a cat or smoking marijuana on the property is verified by the landlord in the future, the record of these events would form part of the landlord's case should it again come before a dispute resolution officer for consideration.

The landlord has not issued the tenant a 10 day notice for unpaid rent or utilities and is not entitled to an order of possession on those grounds. As the tenant stated in the hearing that the utilities would be paid in full on January 6, 2011 the landlord will not be issued a monetary order.

The landlord's November 30, 2011 notice to end tenancy for cause is hereby set aside and the tenancy continues in full force and effect.

The landlord's application is dismissed without leave to reapply.

As the landlord has not been successful in their application the landlord is not entitled to recovery of the $50.00 filing fee.

Conclusion

The landlord's Notice to End Tenancy for Cause dated November 30, 2011 is set aside with the result that the tenancy continues uninterrupted.

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: January 5, 2012

Residential Tenancy Branch

Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC

Introduction

This hearing was convened by way of conference call in repose to the tenants Application for Dispute Resolution to cancel the One Month Notice to End Tenancy for cause.

The tenant and landlords attended the conference call hearing, gave sworn testimony and were given the opportunity to cross exam each other and witness on their evidence. The landlord and tenant provided documentary evidence to the Residential Tenancy Branch and to the other party in advance of this hearing. All evidence and testimony of the parties has been reviewed and are considered in this decision.

Issues(s) to be Decided

- Is the tenant entitled to cancel the Notice to End Tenancy?

Background and Evidence

Both Parties agree that this month to month tenancy started on May 15, 2011. The rent for this unit is $650.00 per month and is due on the first of the month.

The landlord testifies that the tenant was served with a One Month Notice to End Tenancy by posting it to the tenant's door on October 12, 2011. This Notice becomes effective on November 30, 2011. The Notice gave the following reasons to end the tenancy:
The tenant or a person permitted on the property by the tenant has:

- Seriously jeopardized the health, safety or lawful right of another occupant or the landlord

The tenant or a person permitted on the residential property by the tenant has engaged in illegal activity that 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,

The manager testifies that they received a call from another tenant about the smell of marijuana coming from the tenants unit on October 16, 2011. The manager states he went to investigate and could also smell marijuana from the tenants unit. The manager states he knocked on the tenant's door and another tenant residing in the building who is a friend of this tenant opened the door and told him the tenant was not at home but would be back later. The manager states he did not address the smell of marijuana with this friend of the tenants. The manager testifies that they have zero tolerance for any drug use on the property. He states he called the police and was advised to follow eviction procedures.

The manager testifies that the tenant was then served with the One Month Notice to End Tenancy. The tenant disputed this Notice. The manager states the landlord decided to give the tenant another chance if he signed an agreement with them not to smoke marijuana on the property for the tenant and his guests. The agreement also states the landlords have directed the manager to drop the arbitration only if the following conditions are met and the manager needs confirmation from the Residential Tenancy Branch that it is dropped. If there is a breach of these conditions it will force the landlords to re-instate an eviction Notice.

The manager testifies he has no evidence that the tenant has smoked marijuana after this agreement was signed but as he did not cancel this hearing he has breached the agreement and therefore the eviction notice has been reinstated.

The landlord also states the tenants own hand written letter confirms he smokes marijuana as it states "no one smokes in his apartment; it is outside or for a walk."

The manager testifies that that the tenant has a threatening manner when speaking to other staff members. On one occasion he telephoned the office and spoke to a staff member demanding to speak to the landlords. When the staff member told the tenant the landlords were not available the tenant said he would have to come down to the office to deal with this. The landlord states the staff member in question perceived a threat from the tenant and felt it necessary to lock the office doors. This staff member also called the police and reported this incident to them. A police file number has been included in evidence.

The manager testifies when he went to the tenants unit to measure for new carpets as ordered at a previous Dispute Resolution Hearing the tenant would not allow the manager to enter his unit at first and said he had to keep an eye on him. He did then allow entry to the manager and to the carpet fitter but as the tenants tone was aggressive the carpets could not be measured at that time and the manager and carpet fitter left the unit.

The property manager states they have been trying to comply with the previous Order regarding the carpets however the tenant has interfered with the managers and is unable to interact with them

The manager testifies that the tenant also threatened an 11 year old boy and swore at him over an incident with the boy's dog. The landlord has included a letter from this boy's mother in evidence.

The landlord testifies the tenant has made derogatory comments about the landlords on his Facebook page. The manager testifies they were shown these comments by another tenant who was a friend added to this tenants Facebook. The landlords have provided a copy of these comments in evidence and claim these comments should not have been made on a public site such as this.

The landlord seeks an Order of Possession to take effect at 1.00p.m. on November 30, 2011 if the Notice to End Tenancy is upheld.

The tenant disputes the landlords claim. The tenant testifies that he or his guests have never smoked drugs of any kind in his unit or on the landlord's property. The tenant testifies that he does not smoke marijuana and in his hand written letter the landlord refers to the tenant was talking about cigarette smoking and not marijuana. The tenant states he signed the agreement with the landlord to agree that no one would ever do drugs or smoke marijuana in his unit as he does not smoke this and would not allow anyone else to smoke it in his unit. Therefore the tenant states this was an easy agreement to sign.

The tenant testifies that he could not cancel his application for Dispute Resolution as in doing so he would have violated his rights if the landlord tried to enforce the Notice and would leave him open to an eviction from the landlord.

The tenant testifies that the landlords witness statement from the tenant who complained about smelling marijuana states she only believes the smell was coming from his unit. The tenant states this is purely speculation on the part of this witness. The tenant states the last time the witness said she had smelt it was on October 11, 2011, days before he signed this agreement with the landlord.

The tenant disputes that he has been aggressive towards a member of the landlord's staff he states he was upset when he telephoned her but did not threaten her in any way. The tenant states he later called the police himself and found there had been no incidents concerning him reported to them.

The tenant states there was an incident concerning a neighbor's son and his dog however he denies swearing at the boy but agrees he did swear at the dog.

The tenant states he was not aggressive towards the manager or his carpet fitter when they called to measure for carpets. The tenant states he did not want to allow access to the manager as he had previously entered his unit without permission.

The tenants witness testifies that she was present when the manager and his carpet fitter came to the tenants unit. The witness testifies that she did hear the tenant tell the carpet fitter that the manager was not welcome and they did not measure for carpets. The witness states after the tenant told the manager that he would have to keep an eye on him the carpet fitter told the tenant that he did not have to deal with a kid like him and then told the tenant that the manager would never enter a tenants unit without permission as he had known him for a long time.

The landlord declines to cross exam this witness.

The tenant testifies his Facebook site is not a public site and the landlords had no right to try to access this. He states any comments are made for his friends' who are invited onto the site and are not open to the landlord or the public.

Analysis

I have carefully considered all the evidence before me, including the sworn testimony of both parties and witnesses. In this matter, the landlord has the burden of proof and must show (on a balance of probabilities) that grounds exist (as set out on the Notice to End Tenancy) to end the tenancy. This means that if the landlord's evidence is contradicted by the tenant, the landlord will generally need to provide additional, corroborating evidence to satisfy the burden of proof.

I have taken into account each Parties argument and find the landlord has not provided sufficient evidence to show that grounds exist to end the tenancy for cause based on the reasons given on the Notice. The landlord has not shown how the tenant has seriously jeopardized the health, safety or lawful right of another occupant or the landlord and has not provided sufficient evidence to meet the burden of proof that the tenant or his guests have smoked marijuana in his unit or on the property.

Furthermore I am not satisfied that the landlords have met the burden of proof that the tenant actually threatened a member of staff and that the tenants words were not just perceived to be a threat. The landlord witness statement from the boy's mother that the tenant allegedly threatened is not sufficient evidence as they did not call this witness to give sworn testimony or submit to cross examination and as she did not see the incident herself it is deemed to be third hand evidence.

I am also not satisfied that the landlord has met the burden of proof that the tenant or a person permitted on the residential property by the tenant has engaged in illegal activity that 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.

Conclusion

The tenant's application is allowed. The one Month Notice to End Tenancy for Cause dated October 12, 2011 is cancelled and the tenancy will continue.

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 09, 2011.

Residential Tenancy Branch

Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, MNDC, OLC

Introduction

This hearing was convened by way of conference call in repose to the tenants application to cancel the One Month Notice to End Tenancy for cause; For an Order for the landlord to comply with the *Residential Tenancy Act (Act)*, regulations or tenancy agreement; and for a Monetary Order for money owed or compensation for damage or loss under the *Act*, regulations or tenancy agreement.

The tenant and landlord attended the conference call hearing, gave sworn testimony and were given the opportunity to cross exam each other on their evidence. The landlord and tenant provided documentary evidence to the Residential Tenancy Branch. The tenant provided evidence to the landlord in advance of this hearing; however the landlord did not provide evidence to the tenant in advance of this hearing. The tenants' evidence and the testimony of the parties have been reviewed and are considered in this decision.

Preliminary Issues

RTB Rules of Procedure 2.3 states that "if in the course of a dispute resolution proceeding, the dispute resolution officer determines that it is appropriate to do so, the Dispute Resolution officer may dismiss unrelated disputes contained in a single application with or without leave to reapply." In this regard I find the tenant has applied for a Monetary Order for money owed or compensation for damage or loss and for an Order for the landlord to

comply with the *Act*. As these issues are unrelated to the main issues which is to cancel the Notice to End Tenancy I find it is appropriate to dismiss these portions of the tenants claim with leave to reapply.

Issue(s) to be Decided

Is the tenant entitled to cancel the Notice to End Tenancy?

Background and Evidence

Both parties agree that this tenancy started on November 15, 2011. Rent for this unit is $1,250.00 per month and is due on the first day of each month in advance.

The landlord testifies that the tenant was served with a One Month Notice to End Tenancy on January 24, 2012. This Notice was left for the tenant on the dryer in the laundry room. The tenant accepts that she did receive the One Month Notice on January 24, 2012 I therefore consider the Notice to be sufficiently served for the purpose of the *Act*.

The Notice has an effective date of February 24, 2012 and gave the following reasons to end the tenancy:

1) The tenant has allowed an unreasonable number of occupants in the unit

2) 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,

3) The tenant or a person permitted on the residential property by the tenant has engaged in illegal activity that has or is likely to

(i) Damage the landlord's property

(ii) Adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant or the landlord of the residential property, or

(iii) Jeopardize a lawful right or interest of another occupant or the landlord.

The landlord testifies that the tenancy agreement allows for the tenant and her three daughters to reside in the rental unit. The landlord testifies that the tenant has allowed her eldest daughter to also reside in the rental unit as the landlord has seen this daughter there regularly.

The landlord testifies that since moving into the unit the tenant and her daughters have significantly interfered with and disturbed the landlord. The landlord testifies that she lives in the basement unit and the noise from the tenants unit goes on until the early hours of the morning. The landlord states the tenant agreed that any noise would cease after 10.30 at night but the tenant has not adhered to this agreement. The landlord states she has heard noise from an animal running across the tenant's floor even through the tenant is not allowed to keep pets, the landlord states she has been disturbed by music blaring and by yelling and screaming from the tenants unit above. The landlord testifies that it is so bad she is unable to live in her unit and has to go and stay with friends.

The landlord testifies that the tenant or her daughters have been smoking marijuana in the garage and unit and the smell from this filters into the landlords unit and can be smelt mostly in the garage and laundry room. The landlord testifies she has also smelt it in the tenants unit. The landlord testifies that she spoke with the tenant about this problem but the tenant did not respond to the landlord. The landlord testifies that the smell of marijuana affects the landlord quiet enjoyment of her unit and is an illegal activity.

The landlord testifies that the tenant has kept bags of garbage in and around the property. The garbage bags left outside have been torn open by animals and garbage has been strewn across the property.

The landlord testifies that there was an occasion when the landlord saw one of the tenant's daughters standing outside the property in a sweater that the landlord claimed she owned. The landlord testifies that she spoke to the tenant about this and the tenant tod the landlord it was her daughter's sweater. The landlord states the next day this sweater which had been missing from her storage room had been returned.

The landlord requests that the One Month Notice to End Tenancy is upheld and verbally requests an Order of Possession at the hearing.

The tenant disputes the landlord's claims that the tenant eldest daughter has moved into the rental unit. The tenant testifies that her eldest daughter comes to visit the tenant at the unit and has stayed overnight on occasion and has babysat for the tenants other children.

The tenant disputes the landlord claim that the tenant or her children are noisy. The tenant states the landlord will complain about every noise and can hear the tenant and her children walking and talking in their unit. The tenant testifies that neither she nor her daughters play loud music after 9.00 at night as she has a two year child. The tenant also disputes at there is a pet running around the unit. The tenant testifies that she did look after her daughter's cat for a few days. The tenant states both she and her daughters have to walk on egg shells when they are in their unit with fear of disturbing the landlord. The tenant states she does not even have company over in case they were to disturb the landlord.

The tenant disputes the landlord claim that her daughters smoke marijuana in or around the premises. The tenant states she has a two year old daughter and would not allow marijuana to be smoked around her. The tenant agrees her daughter does smoke cigarettes but is not allowed to smoke inside the house or garage.

The tenant testifies that when they moved into the unit the previous tenants had left a number of garbage bags outside which the landlord did not remove. The tenant testifies that one of her daughters picked up all the strewn garbage from these bags and all the garbage has been removed. The tenant states there were some bags in her entrance way which were full of recycling and this has also been removed.

The tenant disputes the landlords claim that the tenant's daughter went into the landlord's storage room and took a sweater belonging to the landlord. The tenant testifies that her daughter has a number of hooded style sweaters.

The tenant requests that the One Month Notice is cancelled.

Analysis

I have carefully considered all the evidence before me, including the sworn testimony of both parties. In this matter, the landlord has the burden of proof and must show (on a balance of probabilities) that grounds exist (as set out on the Notice to End Tenancy) to end the tenancy. This means that if the landlord's evidence is contradicted by the tenant, the landlord will generally need to provide additional, corroborating evidence to satisfy the burden of proof.

I have considered both arguments in this matter and find that the landlord has not shown that the tenant has allowed an unreasonable number of occupants to live in the rental unit and has not shown that the tenants eldest daughter has actually moved into the tenants home and was not merely visiting; The landlord has not shown that the tenant or the tenants children have significantly disturbed the landlord beyond normal living noise; the landlord has not provided sufficient evidence to show that the tenant or the tenants children have been smoking an illegal substance in the property or have stolen items from the landlord storage area; and the landlord has not shown that there is garbage strewn around the property that is the tenants responsibility. Therefore, in the

absence of any corroborating evidence, I find that the landlord has not provided sufficient evidence to show that grounds exist to end the tenancy and as a result, the Notice is cancelled and the tenancy will continue.

Conclusion

The tenant's application is allowed. The one Month Notice to End Tenancy for Cause dated January 24, 2012 is cancelled and the tenancy will continue.

The remainder of the tenants application not heard at the hearing today 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 *Residential Tenancy Act*.

Dated: February 27, 2012.

Residential Tenancy Branch

Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, FF

Introduction

This hearing was convened by way of conference call in repose to the tenant's application to cancel a Notice to End Tenancy for cause and to recover the filing fee from the landlords for the cost of this application.

The tenant and landlords attended the conference call hearing, gave sworn testimony and were given the opportunity to cross exam each other on their evidence. The tenant provided some documentary evidence to the Residential Tenancy Branch and to the other party in advance of this hearing. All evidence and testimony of the parties has been reviewed and are considered in this decision.

Issue(s) to be Decided

- Is the tenant entitled to have the One Month Notice to End Tenancy cancelled?

Background and Evidence

Both parties agree that this tenancy started on December 28, 2011. Rent for this unit is $550.00 and is due on the 1st day of each month in advance.

The landlord testifies that the tenant was served a One Month Notice to End Tenancy for cause on January 25, 2012. This Notice has an effective date of February 25, 2012 and gave the following reason to end the tenancy:

The tenant or a person permitted on the residential property by the tenant has engaged in illegal activity that has or is likely to

(i) Damage the landlords' property

(ii) adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant or the landlord.

The landlord testifies that on December 30 the landlords noticed the smell of marijuana coming from the tenants unit. The female landlord spoke to the tenant about this and informed the tenant that it was rude and asked the tenant not to smoke marijuana in the unit. The landlord testifies that the next day they smelt marijuana again from the tenants unit and in the hallways of this multi person dwelling. The tenant was served with a warning letter dated December 31, 2012 which informed the tenant that this was her second warning and if marijuana was smelt coming from her unit again she would be served with an eviction notice.

The landlord testifies that other tenants complained about the smell of marijuana from the tenants unit and in the hallways. The landlords' testify that this smell also made it difficult for them to show other units to prospective tenants. The landlords also express concern for any young children coming into the building and smelling marijuana. The landlords testify that after the warning letter was given to the tenant they smelt marijuana again coming from under the tenant's door. With this smell and after finding some kind of feces tracked from the laundry room to the tenants door after the tenant had used the laundry room the landlords issued and served the tenant with a One Month Notice to End Tenancy on January 25, 2011. The landlord testifies that after serving the tenant with the Notice the tenant said she was sorry about smoking marijuana and would stop doing it.

The tenant testifies that she did not get a verbal warning from the female landlord on December 30, 2011. The tenant testifies that the female landlord just asked the tenant if the tenant could smell marijuana and said it was rude. The tenant agrees she did get a warning letter from the landlords about smoking marijuana and agrees she does smoke marijuana in her unit.

The tenant disputes the landlords' testimony however that the One Month Notice was given because the tenant smokes marijuana. The tenant testifies when she received the One Month Notice from the landlords she spoke to the landlord and was told the Notice had been given because the tenant had tracked dog feces from the laundry unit to her door. The tenant testifies as she does not own a dog and the only dog is owned by the landlord the tenant states she filed her application to dispute the Notice and seeks to have the Notice cancelled.

The landlords verbally request at the hearing that the Notice is upheld and seek an Order of Possession.

Analysis

I have carefully considered all the evidence before me, including the sworn testimony of both parties. I refer the Parties to the Residential Tenancy Policy Guidelines #32 which deals with illegal activities in connection with a tenancy. Within this section of the Guidelines the term "illegal activity" would include a serious violation of federal, provincial or municipal law, whether or not it is an offense under the Criminal Code. It may include an act prohibited by any statute or bylaw which is serious enough to have a harmful impact on the landlord, the landlord's property, or other occupants of the residential property.

The party alleging the illegal activity has the burden of proving that the activity was illegal.

In considering whether or not the illegal activity is sufficiently serious to warrant terminating the tenancy, consideration would be given to such matters as the extent of interference with the quiet enjoyment of other occupants, extent of damage to the landlord's property, and the jeopardy that would attach to the activity as it affects the landlord or other occupants.

For example, it may be illegal to smoke a single marijuana cigarette. However, unless doing so has a significant impact on other occupants or the landlord's property, the mere smoking of the marijuana cigarette would not meet the test of an illegal activity which would justify termination of the tenancy.

The landlords argue that the smell of Marijuana coming from the tenants unit is affecting the quiet enjoyment of other tenants and the landlords however the landlords have provided no complaint letters or witnesses to determine that other tenants are being affected by this tenants smoking of marijuana. The landlords argue that the smell of marijuana in the hallways puts off potential renters and impacts on children in the building. However, the landlords have provided no evidence to support this. The landlords also mention a matter with feces tracked from the laundry room to the tenant's door; however, the landlords have provided no evidence to support that this was caused by either an illegal activity or by the tenant or a guest of the tenant.

While I agree that the smoking of marijuana is still considered to be an illegal activity in Canada the burden of proof falls to the landlords to support how the tenant, in smoking marijuana, has damaged the landlords property and how this has adversely affected the quiet enjoyment, security, safety or physical well-being of another occupant or the landlords of the residential property.

In this matter I find the landlords have not met the burden of proof and consequently the One Month Notice to End Tenancy is cancelled.

Although there is insufficient evidence at this time to support the landlords claim, the tenant now has written notice that a repeat of this behaviour may result in the tenancy ending.

Conclusion

The tenant's application is allowed. The one Month Notice to End Tenancy for Cause dated January 25, 2012 is cancelled and the tenancy will continue. As the tenant has been successful in setting aside the Notice, she is entitled to recover her $50.00 filing fee for this proceeding and may deduct that amount from her next rent payment when it is due and payable to the landlord.

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: February 17, 2012.

Residential Tenancy Branch

Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, FF

Introduction

This hearing was convened in response to an application by the Tenant pursuant to the *Residential Tenancy Act* (the "Act") for Orders as follows:

1. A Monetary Order for compensation for loss – Section 67; and
2. An Order to recover the filing fee for this application - Section 72.

The Landlord and Tenant were each given full opportunity to be heard, to present evidence and to make submissions

Issue(s) to be Decided

Is the Tenant entitled to the monetary amounts claimed?

Background and Evidence

The tenancy began on June 1, 2001. The Tenant states that for over a year stomping and loud noises coming from the upper unit has caused the Tenant to lose sleep and quiet enjoyment of the unit. The Tenant states that the stomping has become worse over time and that the noise occurs nearly daily and occurs early in the morning and early afternoon to late at night. The Tenant provided three letters from witnesses about the noise experienced while at the Tenant's unit. One letter is undated and does not provide any time span for the four incidents noted. A second letter, dated, heard heavy walking and running steps on an undated occasion. The third letter is dated and notes the sounds heard on January 16, 2012 between the hours of 10:30 a.m. and 1:30 p.m. were "like an earthquake". The Tenant states that the noise has become so bad that she has lost sleep and has to take sleeping medication. The Tenant supplied a letter from her physician confirming that the Tenant was placed on sleep medication due to an

inability to sleep for several months preceding January 20, 2012. The Tenant also supplied a letter from her employer that notes a change in the Tenant since the middle of January 2012 in that the Tenant appears tired and foggy and has made some little mistakes at work. The Tenant states that although she has complained to the Landlord, the noise has not stopped. The Tenant supplied a documented account of the noise over full day periods that occurred on January 16, 23, 24, 25, 27, 28, 29, 30 and February 1, 2, 3, 4, 5, and 6, 2012. The Tenant also supplied letters from other persons who witnessed noise levels on one or more of these dates while in the Tenant's unit. These persons note that the noise level is not within a normal range and have occurred both before and following the Tenant's latest complaint to the Landlords and the application date. The Tenant argues that the upper tenant feels some sense of entitlement and that since January 2012 the noise has been "out of control".

Although the Tenant raised issues involving a cat and rudeness in the materials submitted for the Hearing, the Tenant states that the issue with the cat is not compelling and that she no longer feels that rudeness is an issue.

The Landlord states that upon first hearing of the Tenant's complaint about noise in August 2011, the Landlord spoke with the upper tenant and since then has heard no complaints until the Tenant left three more notes of complaint on January 9, 2012. The Landlord states that upon receiving these complaints, they spoke with the upper tenant, investigated other sources of noise such as from the heater, attended in the Tenant's unit to observe noise levels and finally, wrote a warning letter to the upper tenant on February 6, 2012. The Landlord states that a single tenant who works shift work and odd hours occupies the upper unit and that as the building is a wood frame building, a certain amount of noise would be expected. The Landlord states that the upper unit contains some carpet and the upper tenant has been asked to use throw rugs in heavy traffic areas. The Landlord suspects that the running sounds heard in the unit may be from persons running up the stairwell located near the Tenant's unit. The Landlord submitted a letter to the Tenant, dated January 12, 2012, that addresses the Tenant's

concerns raised in her letters to the Landlord on January 9 and 10, 2012. The Landlord states that they are carrying out their obligations to the Tenant and to other tenants

The Tenant states that she does not and will not smoke in her unit and that throughout her tenancy until July 18, 2011, she smoked on her balcony. On this date, the Tenant received a letter from the Landlord warning her that a complaint was made about the Tenant's regular smoking on her balcony and a strong odor entering the units of other occupants. The letter indicates that further actions such as seeking the Tenant's eviction may be contemplated should the Tenant continue to smoke.

The Tenant states that since this date, she has been smoking outside the building and that this has caused her inconvenience and discomfort during bad weather and that the requirement that she smoke outside raises privacy and safety concerns for herself, particularly when she requires a cigarette late at night. The Tenant states that other tenants smoke on their balconies but have not been required to smoke outside the building. The Parties agree that nothing in the tenancy agreement restricts the Tenant from smoking in her unit or on the balcony. The Tenant requests an order allowing her to smoke on her balcony and compensation for lo.

The Landlord agrees that there has been only one complaint about the Tenant's smoking and that this complaint came from the upper tenant. No other complaints were received from this tenant or other tenants either before or since July 2011. The Landlord states that the warning letter sent to the Tenant did not specifically restrict her from smoking on the balcony but that if they receive a complaint from another tenant, they are obligated to act to ensure that tenant's right to quiet enjoyment are not negatively affected by the Tenant's smoke. The Landlord states that in 2011, the Landlord adopted a policy to require adherence to the City Health bylaw that restricts smoking. The tenants in the building were informed of this policy by way of a general notice of the bylaw in the laundry room. The Landlord argues that the adoption of policy based on the bylaw is reasonable and benefits all Tenants. The Landlord states that

the Tenant's only restriction is to refrain from smoking on the balcony when another tenant will be disturbed.

The Tenant claims the amount of $25,000.00 for loss of her right to quiet enjoyment of the unit arising from the Landlord's restriction on her smoking and in relation to the noise in the unit. The Tenant states that the amount being claimed is not based on anything and is an arbitrary figure.

Analysis

Based on the undisputed evidence of the Parties, I find that the tenancy agreement does not include any restriction on smoking in the unit or the balcony of the unit. Given this tenancy agreement, I find that the Tenant is entitled to smoke either in her unit or on the balcony. Although the Landlord has sought to restrict smoking of the Tenant on the basis of complaints from other tenants and on the basis that the application of the City bylaw to all tenants is reasonable, this action on the part of the Landlord does not form part of the tenancy agreement nor does the adoption of such a policy serve to amend an existing tenancy agreement. It may very well be that other tenants object to the smell of cigarette smoke, however, it would be prudent of the Landlord to inform prospective and existing tenants that the building contains tenants whose tenancy agreements do not restrict them from smoking.

Section 28 of the Act provides that a tenant is entitled to quiet enjoyment including the right to freedom from unreasonable disturbance. Given the Tenant's evidence, including witness evidence, I find that the presence of noise in the Tenant's unit is substantial, well supported and a breach of the Tenant's right to quiet enjoyment of her unit. Although the Landlord argues that they have carried out their obligations to provide the Tenant with peaceful enjoyment of her unit by speaking with the upper Tenant and investigating other sources of the noise, I find that as the Tenant has not had any complaints of noise before the upper tenant moved in and as the other sources investigated were always present and not the source of any complaint before, the

Landlord has failed to reasonably act in relation to the Tenant's stated source of the noise. I further find that waiting nearly a month to issue the upper tenant with a warning letter is an unreasonable amount of time to carry out such a remedy given the level of noise being experienced. Accepting that the Tenant did not raise any issue with noise between the first complaint in August 2011 and the second complaint on January 9, 2011, and that no evidence was provided that the noise continued after the Landlord's letter to the upper tenant on February 6, 2012 I find that the Tenant has substantiated an infringement to her right to peaceful enjoyment from January 9, 2011 to February 6, 2011 due to noise from the upper tenant. I further find, based on the medical evidence, that the Tenant has suffered a lack of sleep from the noise and has been placed on medication as a result.

As the Tenant did not provide any rationale for the amount claimed, I find that the Tenant has not substantiated the amount claimed. I do find however that the Tenant is entitled to a reasonable monetary amount of **$500.00** for the loss of quiet enjoyment of her unit. I find that the Tenant is also entitled to recovery of half the filing fee for **$50.00** for a total entitlement of **$550.00**. I order the Tenant to reduce future rent payable by this amount.

Conclusion

The Tenant is entitled to a monetary amount of $550.00. I Order the Tenant to reduce future rent payable by this amount.

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: February 24, 2012.

Residential Tenancy Branch

DECISION

Dispute Codes MNDC, MNSD, FF

Introduction

This is an application filed by the Landlord for a monetary order for liquidated damages, to keep all or part of the security deposit and recovery of the filing fee.

Both parties attended the hearing and gave testimony. Both parties confirmed receiving the evidence package submitted by the other. As such, I find that both parties have properly been served with the notice to a hearing and evidence packages under the Act.

Issue(s) to be Decided

Is the Landlord entitled to a monetary order for liquidated damages?
Is the Landlord entitled to retain the security deposit?

Background and Evidence

This Tenancy began on November 1, 2011 on a fixed term tenancy until October 31, 2012. The Tenant gave written notice in a letter near the beginning of December 2011 to end the tenancy on December 31, 2011. Both disputes agree that the Tenancy ended on December 22, 2011 prior to the fixed term of October 31, 2012. The monthly rent was $725.00 payable on the 1st of each month and a security deposit of $325.50 was paid on October 7, 2011.

The Landlord is seeking $200.00 for liquidated damages. The Tenant disputes the Landlord's claim by stating that there were health issues regarding second hand smoke that led to him ending the tenancy. The Landlord disputes having received any notice of the Tenant's health concerns. The Landlord relies on the signed tenancy agreement in clause #5 which allows for the Landlord to seek recovery. Both parties agree that the Landlord started advertising and showing the rental beginning on December 10, 2011 and 3 to 4 showings took place. The unit was re-rented for February 1, 2012.

Analysis

I find that the Landlord has established a claim for liquidated damages of $200.00. Clause #5 in the signed tenancy agreement is valid and enforceable as the Tenant ended the tenancy prematurely before the end of the fixed term.

The Landlord is also entitled to recovery of the $50.00 filing fee. I order that the Landlord retain $250.00 from the $362.50 security deposit in satisfaction of this claim. I grant the Tenant a monetary order under section 67 for $112.50. This order may be filed in the Small Claims Division of the Provincial Court and enforced as an order of that Court.

Conclusion

The Landlord may retain $250.00 from the security deposit.
The Tenant is granted a monetary order for $112.50 for the return of the balance of the security deposit.

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: February 24, 2012.

Residential Tenancy Branch

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Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, FF

Introduction

This hearing dealt with an application by the tenants to cancel a notice to end tenancy for cause. Both parties participated in the conference call hearing.

Issue(s) to be Decided

Are the tenants entitled to any of the above under the Act.

Background and Evidence

This tenancy began April 2006 with monthly rent of $590.00 and the tenants paid a security deposit of $295.00.

On January 31, 2012 the landlord issued the tenants a 1 Month Notice to End Tenancy for Cause:

- The tenants have adversely affected the quiet enjoyment, security, safety or physical well-being of another occupant or the landlord.
- The tenants have breached a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.

The landlord testified that in December 2011 they received a number of complaints from other tenants in the building who live on the tenant's floor about a strong odour coming from the tenant's rental unit, namely cigarettes. The landlord stated that on January 17, 2012 they sent the tenants a warning letter advising the tenant's to have their rental unit cleaned and that the landlord would conduct an inspection 48 hours later.

The landlord stated that on January 19, 2012 an inspection of the rental unit was completed by two staff members. The landlord stated that the tenant's had attempted to clean the rental unit but that the walls and curtains were yellowed by cigarette smoke. The landlord stated that the tenants also do not open their windows very often and with the build-up of condensation, black mold has started to form on the window frame. The

landlord did acknowledge that the rental unit may be smoked in and the tenant's are not in breach of a term of the tenancy agreement in this regard.

The landlord then on January 31, 2012 sent the tenants a letter with the outcome of the inspection and issued a 1 month notice to end tenancy for cause.

The tenant testified that they do not open their windows very often because of the cold but stated that today she has a window open.

The tenant in this hearing agreed to:

- Get information/assistance for installation of a fan to vent the cigarette smoke out of their rental unit to the outside.
- Get a fan to use inside the rental unit with an open window.
- Open the windows at least 4 times a day to air the cigarette smoke out of the rental unit.
- Place a towel or blanket at the base of the door that leads to the hallway to minimize smoke going into the common hallway.

The landlord stated that the issues had been close to being resolved until a tenant's rights group stepped in and levied a list of complaints against the landlord and upset not only the landlord but the tenants.

Analysis

Based on the documentary evidence and testimony of the parties I find that there is insufficient evidence to uphold the Notice to End Tenancy for Cause.

The onus or burden of proof is on the party making the claim and in this case the landlord has claimed there is cause to end this tenancy and the tenant does not agree. The landlord must prove he has cause to end this tenancy and when one party provides testimony/evidence of the events in one way and the other party provides an equally probable but different testimony/evidence of the events, then the party making the claim has not met the burden on a balance of probabilities and the claim fails.

The landlord's claim in regards to the tenants adversely affecting the peace and quiet enjoyment of others and being in breach because of their conduct for cigarette smoking does not rise to the level where by this tenancy should come to an end.

The tenants are allowed to smoke in the rental unit and have agreed to take steps to minimize or potentially eliminate cigarette smoke from seeping into the common hallway. The tenants would be well advised to also wash the black mold on the window frames with a diluted bleach solution and opening the windows throughout the day will

help to minimize not only the cigarette smoke in the building but the black mold growth on the window frame.

I find that the landlord has failed in his burden of proving he has cause to end this tenancy.

Accordingly, the notice to end tenancy is hereby set aside and the tenancy continues in full force and effect.

Conclusion

I therefore allow the tenant's application and set aside the landlord's Notice to End Tenancy for Cause dated January 31, 2012 with the result that the tenancy continues uninterrupted.

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: February 23, 2012

Residential Tenancy Branch

Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, FF

Introduction

This hearing dealt with an application by the landlord to keep all or part of the security deposit and recovery of the filing fee. Both parties participated in the conference call hearing.

Issue(s) to be Decided

Is the landlord entitled to any of the above under the Act.

Background and Evidence

This fixed term tenancy began January 1, 2011 with monthly rent of $920.00 and the tenant paid a security deposit of $460.00.

The landlord testified that on October 18, 2011 the tenant gave the landlord notice to end the fixed term tenancy effective November 30, 2011. The landlord stated that the tenancy agreement holds a 'liquidated damages' clause which states if a tenant ends the fixed term tenancy early the landlord is entitled to liquidated damages in the amount of $460.00.

The landlord stated that the tenant had also not cleaned the carpet in the rental unit prior to vacating and the landlord has incurred a cost of $95.20 for carpet cleaning.

The landlord in this application is seeking a monetary order for $555.20 in liquidated damages and cleaning costs.

The tenant testified that all she wanted was her security deposit back and that she had never felt safe in the rental unit due to the constant cigarette smoke in the building. The tenant was advised that if she wished to seek compensation for issues related to this tenancy that she was at liberty to file an application through this office.

Analysis

Based on the documentary evidence and testimony of the parties, I find on a balance of probabilities that the landlord has met the burden of proving that they have grounds for entitlement to a monetary order for liquidated damages and cleaning costs.

The tenancy agreement is very clear in regards to the liquidated damages that a tenant must pay when ending a fixed term tenancy early. The landlord has also provided a receipt for the carpet cleaning in the tenant's rental unit.

Accordingly I find that the landlord is entitled to a monetary order for $555.20.

As the landlord has been successful in their application the landlord is entitled to recovery of the $50.00 filing fee.

Conclusion

I find that the landlord has established a monetary claim for $555.20 in liquidated damages and cleaning costs. The landlord is also entitled to recovery of the $50.00 filing fee. I order the landlord pursuant to s. 38(4) of the Act to keep the tenant's $460.00 security deposit in partial satisfaction of the claim and I grant the landlord a monetary order under section 67 for the balance due of **$145.20**.

If the amount is not paid by the tenant(s), the Order may be filed in the Provincial (Small Claims) 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 *Residential Tenancy Act.*

Dated: February 23, 2012

Residential Tenancy Branch

Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC and FF

Introduction

By application of January 30, 2012, the tenant sought to have set aside a one-month Notice to End Tenancy for cause dated January 28, 2012 and recovery of the filing fee for this proceeding.

Issue(s) to be Decided

This matter requires a decision on whether the Notice to End Tenancy should be upheld or set aside.

Background and Evidence

This tenancy began on April 1, 2011 under a one-year fixed term agreement set to end on April 1, 2012. Rent is $1,000 per month and the landlord holds a security deposit of $500 paid on March 31, 2011. The rental unit is a lower suite and the landlord and her children occupy the upper unit. The rental unit is shared by the tenant's brother.

During the hearing, the landlord gave evidence that the Notice to End Tenancy had been served because the tenant had breached a material term of the rental agreement, and adversely affected the quiet enjoyment and safety of other occupants by smoking in and adjacent to the rental unit.

The landlord said that tenant and his guests had smoked by cigarettes and marijuana in the rental unit and in the carport which was a breach of the no smoking term of the rental unit. In support of the outdoor smoking, the landlord submitted photographs of a wine bottle containing many butts, and showing several butts scattered on the ground.

The parties concurred that the tenant had acknowledged that he smoked at the beginning of the tenancy and that he was happy to be moving into a non-smoking unit as it would help him cut down.

The tenant acknowledge that he had used marijuana in the past, but only on the road, and that he had given it up as a New Year's resolution and in consideration of a possible drug testing program at his place of employment. He stated that neither he nor his guests had smoked in the rental unit, although the landlord gave evidence that she and a number of guests were aware of strong odours of cigarette and marijuana smoke wafting into her rental unit on many occasions.

The tenant stated that he believed the Notice to End Tenancy had been served in retaliation for a letter he had sent to the landlord on January 21, 2012 complaining of the sound of amplified guitar music and the sound of thumping emanating from her unit.

The landlord replied by letter of January 24, 2012, apologizing for the disturbance and noting that the amplifier had come into her home shortly after Christmas. She also explained that she had thumped on the floor when unwelcomed noise emanated from his unit and acknowledged that as an inappropriate method of communication. The letter pledged an ongoing effort to be attentive to the tenant's quiet enjoyment.

Among other issues, the letter also stated:

".....you agreed that there would not be any smoking in the suite or on my property.... This is a health concern and a breach of the agreement....you have assured me that it would not continue....I have repeatedly seen you and your guests...smoking in my carport. I ask you to discontinue any smoking and drugs in the suite, in the carport and/or on my property as per our original agreement."

The landlord stated that when she smelled a very strong odour of marijuana coming from the suite on January 28, 2012, it was the last straw, leading to the Notice to End Tenancy.

The landlord also stated that the tenant had breached the rental agreement by he and his guests parking on areas other than the two gravelled parking spaces designated for the tenant's use, including on the landlord's grass.

The landlord submitted into evidence a Craigslist posting with the subject line, "DO NOT RENT." The posting was discovered by her on February 13, 2012 and had been posted on January 29, 2012.

The landlord stated that the posting had greatly distressed her and her children as it contained her telephone number and address, information she would not include in her own ads.

The post contained a number of disparaging remarks about the rental unit including a reference to mould and three-inch brown recluse spiders, and referred to the landlord as a "wack job."

The tenant denied having submitted the posting and suggested it may have come from the previous tenant who left nearly a year earlier.

However, I note that it contains a reference to the electric guitar that appeared only after Christmas 2011, states that the landlord served an eviction notice after the tenant had complained about the guitar, and states that the landlord had made comments about the author's sex life, a complaint the tenant had raised in his submissions because the landlord had asked him to be aware that sounds from his bedroom could be heard by her and her children.

The landlord stated that Craigslist removed the posting on her request, and that it had helped to explain some curious incidents related to her attempts to rent the suite.

The landlord gave evidence that the tenant had, during a showing to a friend he thought was a prospective tenant, stated that a non-working light was probably the result of faulty wiring, that the top of the toilet tank was removed because of problems from the beginning of the tenancy, among other complaints that had never been referred to the landlord.

Analysis

Section 47(1)(h) of the *Act* provides that a landlord may serve a one month notice to end tenancy when a tenant has failed to correct a material breach of the rental agreement within a reasonable time of written notice.

I find as fact that the tenant continue to smoke permit guests to smoke marijuana in the rental unit after having been given written notice to do so.

Section 47(1)(e)(ii) provides for the one month notice in matters in which the tenant or his guests have engaged in an illegal activity that, "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…" I accept the evidence of the landlord that marijuana has been used in the rental unit and/or on the rental property.

In addition, section 47(1)(j) of the Act permits a landlord to end a tenancy in circumstances in which the tenant knowingly gives false information about the residential property to a prospective tenant or purchaser viewing the residential property. I find the tenant may well have done so during the tenant viewing in which the landlord stated he followed the landlord and the "prospective tenant" out of the rental unit stating that it would not be available until April 1, 2012 even though he had a Notice to End Tenancy effective February 29, 2012.

With respect to the Craigslist advertisement, I find that the tenant is, on the balance of probabilities, the author of the advertisement, and that it was a retaliatory act against the landlord for serving the Notice to End Tenancy.

Section 95 of the *Act* provides that:

> 2) A person who coerces, threatens, intimidates or harasses a tenant or landlord
>
> (a) in order to deter the tenant or landlord from making an application under this Act, or
>
> (b) in retaliation for seeking or obtaining a remedy under this Act
>
> commits an offence and is liable on conviction to a fine of not more than $5 000.

On balance, I found that the Notice to End Tenancy of January 28, 2012 was lawful and valid and declined to set is aside.

On hearing that determination, landlord requested an Order of Possession under section 55 of the *Act* which compels the issuance of the order when a tenant's

application to set aside a Notice to End Tenancy is dismissed and/or the notice is upheld.

Conclusion

The Notice to End Tenancy of January 28, 2012 is upheld.

The landlord's copy of this decision is accompanied by an Order of Possession, enforceable through the Supreme Court of British Columbia, to take effect at 1 p.m. on February 29, 2012.

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: February 17, 2012.

Residential Tenancy Branch

Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes DRI, MNDC, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the tenant for an order to cancel the addition rent increase, a monetary order for compensation, and allow a tenant to reduce rent for services or facilities agreed upon but not provided.

Both parties appeared, gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions to me.

Preliminary issue

The parties agree that the landlord served the tenant with three months notice of a rent increase, which is to commence April 1, 2012. The parties agree that the notice is in the prescribed form and the rent increase falls within the limits permitted by the Act. The parties agree that there has been no previous rent increase in the past twelve months. Filed in evidence is a copy of the notice of rent increase.

The legislation permits a landlord to impose a rent increase permitted under the Residential Tenancy Act. The tenants rent cannot be increased unless the tenant has been given proper notice in the approved form at least 3 months before the increase is to take effect. The tenant's rent can only be increased once every 12 months. A rent increase that falls within the limit permitted by the applicable Regulation cannot be disputed at a dispute resolution hearing.

As this rent increase falls with the limit permitted by the Act. I find the tenant's application to dispute the rent reduction has no merit and cannot be disputed at a dispute resolution hearing. Therefore, I dismiss the tenant's application to cancel the rent increase.

This hearing proceeded on the balance of the tenants claim in the application.

Issue(s) to be Decided

Is the tenant entitled to a monetary order for compensation under the Act?
Is the tenant entitled to a rent reduction for loss of services or facilities?

Background and Evidence

The tenancy began on April 1, 2011. Rent in the amount of $750.00 was payable on the first of each month. A security deposit of $375.00 was paid by the tenant.

Parking

The tenant testified commencing May 15, 2011, she was not able to use the parking facilities provided to her under the tenancy agreement. The tenant stated the landlord used her parking spot to park a tent trailer and later a travel trailer. The tenant stated she did not have access to the parking facilities until October 19, 2011. The tenant is seeking compensation in the amount of $265.00 for the loss of her parking facilities.

The tenant testified she was able to park on the street in front of the rental unit at no cost. However, at times, it was not convenient as the parking spot in front of the rental unit was not always available and she had to park down the street a few houses away.

The landlord testified the tenant did loss her parking facilities from June 18, 2011 to the end of August 2011, due to a travel trailer that was purchased. However, the travel trailer was sold in August 2011 and parking facilities were available to the tenant. The landlord states the tenant was fully aware the travel trailer was gone as the tenant is a smoker and the designated spot for smoking was by the travel trailer. The landlord stated the tenant chose to park on the street as it was more convenient for the tenant as the designated parking facilities is located at the back of the property.

The tenant argued that she does smoke daily in the designated smoking area but had no idea that the trailer was gone and the spot was available. The tenant acknowledge the parking facilities and smoking area are in the same area.

Filed in evidence is a text message from the tenant, which indicates loss of parking facilities in the month of June or July. Filed in evidence is the landlord text message indicating loss of parking facilities commencing June 18, 2011.

Storage

The tenant testified when she entered into the tenancy agreement the landlord provided her a small area to store her belongings in the garage. The tenant stated that she explained to the landlord that she had washer and dry and needed to store them. The tenant stated the landlord hesitated, but agreed she could store those items.

The tenant testified that on October 24, 2011, the landlord text messaged her and told her that she had to clear all her stuff out of the storage area. As a result, she gave her washer, dryer and dishwasher away and is seeking to recover the cost for those items

in the amount of $630.00. The tenant is also seeking $506.00 for compensation for loss storage facilities and is seeking a rent reduction of $80.00 per month.

The landlord testified the tenant was given a small area to store her belongings. The tenant was told that she could use that area for items that would fit into that area. The landlord stated the tenant was at least eight feet outside her designated spot and was asked to remove some of the items.

The landlord testified that tenant was never told to remove all of her items from the storage facilities and the tenant still has access to store items in the designated spot. Filed in evidence is a copy of the text message dated October 24, 2011.

Internet Service

The tenant testified internet service was not a term of the tenancy agreement. The tenant stated the landlord gave her access to her personal internet account and since the landlord changed her password, she no longer has access. The tenant is seeking compensation in the form of a rent reduction at the rate of $40.00 per month for loss of internet service.

The landlord testified she gave the tenant access to her personal internet account and had to change her password, because the she was notified by the internet service provider that the account was being abused for copyright infringements. Filed in evidence is a warning letter from the internet provider, alleging abuse of services.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

Parking

The parties agree the tenant loss the use of her parking facilities. The tenant's evidence was that she no longer had access for parking on May 18, 2011. However, the tenants text message which states "I lost my parking sometime in June or July" [reproduced as written]. The landlord's evidence was the tenant was unable to use the parking facilities from June 18, 2011.

The evidence of the tenant was that she unaware until October19, 2011, that the travel trailer was gone and that her parking facility was available. The evidence of the landlord was the tenant smoked daily in the designated smoking area, which was beside the travel trailer and it would have been impossible for her not see the travel trailer gone.

I prefer the evidence of the landlord over the tenants, the tenants verbal testimony was conflicting with the documentary evidence filed by the parties which confirms the tenant

loss the parking spot on June 18, 2011. The tenant's evidence was she had no idea the travel trailer was gone in August 2011, however, the tenant smokes daily in the designated smoking area, which is beside the parking facilities. I find that it would not be possible for the tenant not to have noticed the travel trailer was no longer in the parking area. Therefore, I find the tenant loss the use of her parking facilities from June 18, 2011 to the end of August 2011.

However, the tenant did have alternative parking at no cost and on occasion was inconvenient by having to park a few house away. Therefore, I grant the tenant compensation the amount of $30.00 for loss of parking facilities for that time period.

Storage

The evidence of both parties was the tenant did have a small area to store her belongings. The evidence of the tenant was the message dated October 24, 2011, sent by the landlord told her she had to remove all of her belongings from the storage area. As a result, she gave away her dishwasher, washer and dryer. The evidence of the landlord was the tenant was told to remove some of her belongings as she was outside her designated area. The evidence of the landlord was the tenant still has the original designated area to store some of her belongings.

The text message dated October 24, 2011, states "sorry to bother you but will you be able to clear some of the stuff outta the garage soon" [reproduced as written]. There is no reference in the text message, which would suggest the tenant was required to remove all of her belongs or that the landlord was taking away her storage facilities that was originally provided to the tenant under the tenancy agreement.

I find the landlord has not taken away or reduced the tenant storage facilities. The tenant was given a small designated area to store personal items. The tenant had excessive items that exceeded the designated space and was asked to clear them from the unauthorized area. Therefore, I dismiss the tenant claim for compensation for loss of the storage facilities. I also, dismiss the tenant request for a rent reduction.

The tenant is seeking compensation for items she gave away as a result of having to clear her items out of the unauthorized area. I find the tenants claim has no merit. Therefore, the tenants request for compensation for those items is dismissed.

Internet

The parties agree the internet services was not a term of the tenancy agreement. The evidence was the landlord gave the tenant her password to her personal account. The evidence of the landlord was the tenant abused her account and she changed her password.

As the tenancy agreement did not provided the tenant with internet access, I find the tenants claim for a rent reduction for loss of service has no merit. Therefore, I dismiss the tenants claim for a rent reduction for loss of services.

As I have found the tenant did loss parking facilities for a specified period, the tenant is entitled to deduct $30.00 from a future month rent payable. The tenant is not granted the cost for filing the application as the tenant's application has largely been unsuccessful.

Conclusion

The tenant is granted a monetary claim, and may deduct that claim from a future month rent payable.

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: March 22, 2012.

Residential Tenancy Branch

Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: CNC

Introduction

This hearing dealt with an application by the tenant for an order to set aside a notice to end tenancy. Both parties attended the hearing and had opportunity to be heard.

Issue to be Decided

Does the landlord have grounds to end this tenancy?

Background and Evidence

The tenancy began on January 15, 2012. The rental unit consists of an apartment on the second floor of a building complex. A restaurant rents the first floor. On March 02, 2012, the landlord served the tenant with a one month notice to end tenancy for cause.

The notice to end tenancy alleges that the tenant or a person permitted on the property by the tenant has significantly interfered with or unreasonably disturbed another occupant. The notice also alleges that the tenant has engaged in illegal activity that has adversely affected the quiet enjoyment, security, safety or physical well-being of another occupant and jeopardized a lawful right of another occupant.

The landlord stated that the restaurant owner has made several complaints about the smell of marijuana coming from the second floor. Upon receipt of each complaint, the landlord gave the tenant a verbal warning. The tenant denied smoking marijuana inside the apartment and stated that there are several other tenants on the second floor, who do so. The tenant also stated that she is on house arrest and is randomly visited by the local police. If she is found smoking marijuana, she will be arrested and sent to jail and for this reason she does not smoke inside the rental unit. The landlord did not file any evidence to prove the origin of the marijuana smoke.

The landlord also described an incident on February 29 which prompted the landlord to issue the notice to end tenancy. The tenant's visitors got into a fight and one of them threw a pot full of food into the hallway. The tenant did not dispute this but stated that those visitors were no longer welcome in her apartment, this was a first incident of this nature and since that day there have been no more incidents. The landlord did not serve the tenant with any warning letters nor did she file any documentary evidence to support her reasons for wanting the tenancy to end.

Analysis

In order to support the notice to end tenancy, the landlord must prove at least one of the grounds alleged, namely that the tenant has significantly interfered with or unreasonably disturbed another occupant and/or has engaged in illegal activity that has adversely affected the quiet enjoyment, safety or physical well-being of another occupant.

As explained to the parties during the hearing, the onus or burden of proof is on the party making a claim to prove the claim. When one party provides evidence of the facts in one way and the other party provides an equally probable explanation of the facts, without other evidence to support the claim, the party making the claim has not met the burden of proof, on a balance of probabilities, and the claim fails. In this case the landlord stated that the tenant smokes marijuana inside the apartment while the tenant denies doing so. The landlord did not file any additional evidence to support her testimony and therefore I find that the landlord has not proven that the tenant's unit is the only source or one of the sources of the smell of marijuana smoke.

I accept that the tenant and/or her guests created some disturbances on February 29, but I am not satisfied that the actions of the tenant justify bringing this tenancy to an end. Since the landlord did not file any evidence to support her notice to end tenancy and has not served the tenant with warning letters, it appears that this incident is isolated and not an ongoing pattern of behaviour for this tenant. I therefore allow the tenant's application and set aside the landlord's Notice to End Tenancy dated March 02, 2012. As a result, the tenancy shall continue in accordance with its original terms.

The tenant would be wise to refrain from giving other occupants of the residential complex, reason to complain. I find it timely to put the tenant on notice that, if such behaviours were to occur again in the future and another notice to end tenancy issued, the record of these events would form part of the landlord's case should it again come before a dispute resolution officer, for consideration.

Conclusion

The notice to end tenancy is set aside and the tenancy will continue.
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: March 29, 2012.

Residential Tenancy Branch

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Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNDC, MNSD, FF

Introduction

This matter dealt with an application by the Landlords for compensation for cleaning and repair expenses, for a loss of rental income, to recover the filing fee for this proceeding and to keep the Tenant's security deposit and pet damage deposit in partial payment of those amounts.

The Landlords' application was originally heard on December 5, 2011 and a Decision and Monetary Order in the amount of $6,567.64 was granted to the Landlords on December 6, 2011. The Tenant applied for a Review of that Decision on the grounds that she was unable to attend the original hearing due to circumstances beyond her control and her application was granted on January 3, 2012. Consequently, the Landlords' application was reconvened for hearing to determine if the Decision and Order dated December 6, 2011 should be confirmed, varied or set aside. Accordingly, the Parties were advised by me at the beginning of the 1st day of the reconvened hearing that this proceeding would be treated as a new hearing which meant that they would have to present all evidence and submissions upon which they were relying and could not rely on findings made by me in the previous decision.

At the beginning of the 1st day of the reconvened hearing, the Tenant and her Advocate confirmed that they had received the Landlords' application and evidence package. The Landlords also confirmed that they had received evidence submitted by the Tenant. At the beginning of the 2nd day of the reconvened hearing, the Tenant and her Advocate claimed that a proposed witness could not attend the hearing and instead they relied on a written statement from that witness which I find was also served on the Landlords.

Issue(s) to be Decided

1. Are the Landlords entitled to cleaning and repair expenses and if so, how much?
2. Are the Landlords entitled to compensation for a loss of rental income?
3. Are the Landlords entitled to keep the Tenant's security deposit and pet damage deposit?

Background and Evidence

This tenancy started on July 5, 2005. The Landlords claim that the Tenant moved out on May 28, 2011 however, the Tenant claimed that she moved out of the rental unit on May 24, 2011. Rent was $726.00 per month payable in advance on the 1st day of each month. The Tenant paid a security deposit of $325.00 and a pet damage deposit of $100.00 on August 1, 2005.

The Landlords completed a move in condition inspection report with the Tenant on July 30, 2005. The Landlords said the rental unit was only a year old at the beginning of the tenancy and was in good condition with the exception of carpeting that had some stains. The Landlords said the Tenant told them she was moving at the end of May 2011 and therefore they expected that she would be available on May 31, 2011 to do a move out inspection. Instead the Landlords said the Tenant left a telephone message on May 28, 2011 advising them that she had already moved out and she did not leave a telephone number where she could be contacted. Consequently, the Landlords said they did an inspection on May 31, 2011 without the Tenant and found some condition issues so they sent the Tenant a Final Notice to Schedule a Condition Inspection (by courier) on June 3, 2011 and again on June 9, 2011 to a forwarding address provided by the Tenant (in a telephone message) however she did not respond.

The Tenant said she was not aware that she was required to participate in a move out inspection because the Landlords never approached her about doing one. The Tenant said she spoke with the Landlord, B.C., on or about May 17, 2011 to advise her about a friend who might be a prospective tenant and B.C. said nothing about doing an inspection at that time. The Tenant said a week later when she vacated with a moving van, she could see the Landlord, D.C., watching her from his residence nearby and therefore she argued that the Landlords were aware that she was leaving but took no steps to arrange a move out inspection. The Tenant said she arranged to have a cleaner clean the rental unit on May 27, 2011 and left a telephone message for the Landlord, B.C. the following day that the keys were in the rental unit and gave her a forwarding address. The Tenant said she did not receive a Notice from the Landlords to participate in a move out inspection because they were delivered to the wrong unit number at her mailing address (which was her daughter's residence).

The Parties agree that it was a term of the tenancy agreement that there would be no smoking in the rental unit. The Landlords said when they attending the rental unit on one occasion in early 2010, they saw the Tenant smoking and saw a garbage can tipped over with "hundreds" of cigarette butts strewn on the ground. One of the Landlords, D.C., also claimed that he saw the Tenant on one occasion when entertaining guests walk in and out of the rental unit with a lit cigarette. Consequently, the Landlords confronted the Tenant about smoking in the rental unit and she initially denied it until they threatened to take a swab of the walls and have it tested at the Tenant's expense. On April 17, 2010, the Tenant gave the Landlords a letter in which

she admitted to smoking in the rental unit but claimed that she had done so only a few times. The Landlords claim that the Tenant smoked in the rental unit throughout the tenancy however the Tenant claimed that she did so only for a period of about 3 weeks during which her mother was very ill.

The Parties also agree that Landlords did periodic inspections of the rental unit throughout the tenancy. The Tenant said although the Landlords' inspections were very thorough, they never brought any concerns to her attention until mid-April of 2010. The Landlords said they believe the Tenant may have been concealing the smell of cigarette smoke with candles and air fresheners during previous inspections.

The Landlords got an estimate from a restoration company in May 2010 to sanitize and repaint the rental unit for a cost of approximately $6,500.00. The Tenant said that she spoke with the person from the restoration company who attended the rental unit and he advised her that he was there to prepare an estimate for painting only. The Tenant said she advised this person that she believed the Landlords were also concerned about her smoking inside but this person allegedly claimed that he did not see any evidence of smoking such as yellowed walls. Instead the Tenant claimed that the restoration company agent found discoloration behind the propane stove which he said was normal due to the rising heat. The Tenant argued that the Landlords never advised her that they were going to be doing any special cleaning or that any special measures needed to be taken and argued that they she only received a copy of the restoration company's estimate prior in the Landlords' evidence package.

The Landlords claim that at the end of the tenancy the walls, ceilings and window coverings in the rental unit were all yellowed from cigarette smoke residue which the Tenant denied. The Landlords said they did not have the restoration company do any work but instead cleaned and repainted the rental unit themselves. The Landlords said it took them many hours to wash and prime all of the walls and to sand the ceilings to remove cigarette smoke residue before they could be re-painted. The Landlords also claimed that because the ceilings were vaulted, it took additional time to set up scaffolding. The Tenant argued that any discoloration on the ceiling was located only in the area above the propane stove. The Tenant also argued that the rental unit had not been painted in the 6 years that she had resided there and for that reason alone it would have had to be repainted at the end of the tenancy. The Tenant further argued that it was the Landlords' responsibility to either clean inaccessible areas (such as the vaulted ceilings) or to provide her with special equipment so she could clean them.

The Landlords said that the carpets in the living room, bedroom and on the stairs had additional stains at the end of the tenancy and they could not be removed despite numerous attempts by themselves and a professional carpet cleaner to do so. The Landlords provided a quote for approximately $2,200.00 to replace the carpeting with some of a similar quality. The Tenant claimed that the carpets were so badly stained at the beginning of the tenancy that approximately one month after she moved in, she purchased a large carpet and laid it over the soiled one in the living room for the

duration of the tenancy. Consequently, the Tenant argued that the carpets were in the same condition at the end of the tenancy as they were at the beginning of the tenancy. The Landlords said 6 of the metal blinds in the rental unit were also damaged at the end of the tenancy and they sought compensation of $807.97 (which included installation) to replace them. The Landlords admitted that they made repairs to some of the blinds that had damaged slats but argued that they still had to be replaced because they were not completely repaired and that others were discoloured from cigarette smoke residue. The Tenant admitted that she damaged a small, kitchen blind but argued that any damage to any of the other blinds was minor and that there was no evidence that any of the blinds were discoloured.

Landlords also said that it was a term of the tenancy agreement that the Tenant would clean the propane fireplace every year however she did not do so and it required cleaning at the end of the tenancy at a cost to them of $88.48. The Landlords claimed that the Tenant was only supposed to use the propane fireplace as a secondary source of heat but instead she used it as her primary source of heat. As a result, the Landlords argued that they would not have incurred maintenance expenses had the Tenant not used it all of the time. The Tenant argued that it was the Landlords' responsibility to maintain the propane fireplace.

The Landlords said that as a result of the time it took them to complete all of the repairs, they could not re-rent the rental unit and lost rental income for June 2011. The Tenant claimed that when she approached the Landlord, B.C., in mid-May 2011 about the possibility of a friend renting the rental unit, B.C advised her that she did not intend to rent out the rental unit for a few months because she was not up to it. B.C. admitted that she was having some trouble with her legs but claimed that the real reason she was not planning on renting out the rental unit was because she believed it was going to take some time for her to clean it up.

Analysis

Sections 32(3) and (4) of the Act says that a Tenant must repair damage to the rental unit that is caused by the act or neglect of the Tenant or a person permitted on the residential property by the Tenant but is not responsible for reasonable wear and tear. Policy Guideline #1 defines "reasonable wear and tear" as natural deterioration that occurs due to aging and other natural forces, where the Tenant has used the premises in a reasonable fashion."

I find that it was a term of the Parties' tenancy agreement that there was to be no smoking in the rental unit but that the Tenant did smoke in the rental unit during the tenancy. The Landlords argued that based on the yellowed discolouration of the walls and ceilings they found at the end of the tenancy, they believe the Tenant had been smoking inside the rental unit for a long period of time. In support of their position, the

Landlords provided photographs they said they took of the rental unit prior to the tenancy as well as photographs that they said they took on May 31, 2011. The Landlords' witness gave evidence that his residence is located approximately 80 feet from the Tenant's back door and that he never saw her smoking in her vehicle as she alleged. The Landlords' witness (who is another family member) also claimed that he viewed the rental unit after the Tenant vacated and observed yellowed walls, cobwebs in the vaulted ceiling, bent metal blinds and the smell of stale cigarette smoke.

The Tenant claimed in her letter dated April 17, 2010 that she smoked only a few times and at the hearing she claimed it was over a 3 week period in 2010. At all other times, the Tenant claimed that she smoked outside or in her car. The Tenant also claimed that when the weather was bad, she would wrap the cigarette butts in a paper towel and throw them in her indoor garbage. The Tenant relied on a witness statement of a friend as evidence that she did not smoke in the rental unit while she was present. The Tenant and her Advocate argued that the Landlords' photographs do not show discoloration of the walls and that any discoloration on the ceiling was due to the angle of exposure to light when the photo was taken or alternatively the result of rising heat from the propane stove. The Tenant's Advocate also argued that the estimate from the restoration company made no mention that cigarette smoke residue was present. The Tenant claimed that she left the rental unit reasonably clean at the end of the tenancy except for the vaulted ceiling that she could not reach without special equipment. The Tenant provided a witness statement from the cleaner who cleaned the rental unit at the end of the tenancy which lists the things that she did.

I cannot give the Tenant's evidence much weight for the following reasons. The deponents of the witness statements provided by the Tenant did not attend the hearing to give evidence with the result that neither their credibility nor the reliability of their statements could be tested. Similarly the Tenant's evidence about what a restoration company employee allegedly told her is hearsay. The Tenant's oral evidence was also unreliable as it changed frequently. For example, the Tenant first claimed that the tenancy started on July 5th and later claimed it was August 5th. The Tenant then claimed she did not participate in a move in inspection then claimed that she did. The Tenant also claimed that the Landlords never approached her about smoking but then admitted they did. I also find that the Tenant was dishonest with the Landlords about whether she smoked in the rental unit and only confessed when the Landlords threatened to do a residue test. The Tenant later claimed in a letter that she had smoked inside only a few times, however at the hearing she admitted that she had done so over a period of 3 weeks. The Tenant also gave evidence that did not stand to reason. For example, she claimed that although she smoked outside or in her vehicle (so that the smell of smoke would not be inside), she also claimed that it was her practice during inclement weather to wrap cigarette butts in paper towels and bring them inside to dispose of them (and thereby bring the smell of the cigarette inside) rather than to use her vehicle ash tray.

However, notwithstanding the difficulties with the Tenant's evidence, it is the Landlords who have the burden of proof and who must show on a balance of probabilities that the walls, ceilings and window coverings in the rental unit were damaged by residue from the Tenant smoking inside. I do not give any weight to the Landlords' move out condition inspection report. Section 35 of the Act and s. 17 of the Regulations put the onus on a Landlord to schedule a move out inspection with a Tenant ***before*** the tenancy ends. I find that the Landlords took no steps to schedule a move out inspection prior to May 28, 2011 although the Tenant had given advance notice, had spoken to one of the Landlords on May 17, 20011 and at least one of the Landlords witnessed the Tenant moving her belongings into a moving truck on May 24, 2011.

Consequently, the only reliable, corroborating evidence of the condition of the rental unit at the end of the tenancy is the Landlords' photographs. While the close up photographs of the alcove ceiling above the propane fireplace shows some yellowing, the Landlords provided no photographs of any other areas of the ceiling they claimed were yellowed. Consequently, I find that the only area of the ceiling that was discoloured was above the propane fireplace and I cannot conclude that this discoloration was the result of cigarette smoke as opposed to heat from the fireplace. Furthermore, while some of the photographs of the walls taken at the end of the tenancy (eg. #31, #32 and #33) show what appears to be a yellowish tinge, I also note that photographs of some walls taken prior to the tenancy appear to have the same yellowish tinge (ie. #4, #9 and #12). Consequently, I cannot conclude that the yellowish tinge on the walls is from cigarette smoke residue as opposed to the exposure of light. I also find it significant that although the Landlords did detailed, periodic inspections throughout the tenancy, they never alleged that there was cigarette residue on the ceilings, walls or window coverings until after the tenancy ended.

The only evidence of dark, yellow discolouration on a wall is in a lower corner of the loft area by the baseboards. Furthermore, the estimate provided by the restoration company states at the top of the page "*Cigarette smoke....Quote as per scope provided.*" There are no particulars provided in the document itself to conclude that cigarette smoke residue was found. At best, the document suggests that the Landlords requested the quote on the basis that they believed there was cigarette smoke residue. In summary, I find that the Landlords have provided insufficient evidence to conclude that the walls, ceilings or window coverings were damaged during the tenancy by cigarette smoke.

RTB Policy Guideline #1 states that a Landlord is responsible for painting the interior of a rental unit at reasonable intervals. RTB Policy Guideline #37 at Table 1 says that the useful lifetime of paint is 4 years. By the end of the tenancy, I find that the paint inside the rental unit was probably 7 years old. In the absence of sufficient evidence that painting was required due to an act or neglect of the Tenant, I find that the Landlords were responsible for painting the interior walls and ceilings at the end of the tenancy.

Consequently, the Landlords' claim for cleaning and repainting is dismissed without leave to reapply.

The Landlords also sought to recover $2,200.00 for new carpeting. The Landlords admitted that there were some small stains on the living room and one of the bedroom's carpets at the beginning of the tenancy. The Landlords claimed, however that there was additional, significant staining on the carpeting in the living room, in a bedroom and on stairs at the end of the tenancy which is shown in their photographs. The Tenant claimed that the carpets already had this damage at the beginning of the tenancy and that it was due to an oversight during the move in inspection that she failed to note all of the stains on the condition inspection report. However, s. 21 of the Regulations to the Act says that a condition inspection report completed in accordance with the Regulations is evidence of the condition of the rental unit at that time unless one of the Parties has a preponderance of evidence to the contrary. I find that the Tenant's evidence that she covered the living room carpet with another rug approximately a month after the tenancy started does not amount to a "preponderance" of evidence necessary to displace the move in condition inspection report. Consequently, I find that the Landlords are entitled to compensation for the damaged carpets.

However, I find that the Landlords are not entitled to recover the cost of a new carpet to replace a carpet that was 7 years old (and would have had some wear and tear) at the end of the tenancy. Instead, I find that the Landlords are entitled to the recover the depreciated cost of the damaged carpeting. RTB Policy Guideline #37 at Table 1 says that the useful lifetime of a carpet is 10 years. Consequently, I award the Landlords 30% of the cost of the damaged carpeting (of $2,068.66 which excludes the cost of installation) or **$620.60**.

The Landlords further sought to recover $807.97 to replace blinds in the rental unit. The Landlords said the blinds were in good condition at the beginning of the tenancy but that at the end of the tenancy many of the slats were bent and discoloured from cigarette smoke residue. The Landlords said they were able to replace some damaged slats but claimed that the blinds were still not fully repaired. The Tenant admitted that she damaged one blind in the kitchen, denied that there was any cigarette smoke residue on others and argued that any other damage was minor.

Based on the Landlords' photographs, many of the slats in the kitchen blinds are badly bent and therefore the whole unit will likely have to be replaced. The Landlords provided photographs of other blinds in the kitchen/eating area and front room that have minimal damage but which they claim the drawstrings have yellowed from smoke. The Landlords admitted that they repaired some blinds but claimed they still needed to be replaced due to the very soiled or discoloured cords. However, I find that these blinds do not need to be replaced because they are likely functional and can be cleaned. The Landlords provided no photographs of the blinds in the 2 bedrooms that were also alleged to have been damaged. Based on the evidence of the Landlords, I find that

they are entitled to be compensated for damaged blind in the kitchen ($63.63) and for expenses to clean the blinds in the living room.

However, as indicated above, the Landlords are not entitled to be compensated for the cost of new blinds to replace blinds that were 7 years old at the end of the tenancy (and would have had some wear and tear). RTB Policy Guideline #37 at Table 1 says that the useful lifetime of venetian blinds is 10 years. Consequently, I award the Landlords 30% of the cost of the one damaged blinds ($60.60 + 1/3 installation or $54.05 = $114.65) for a total of **$34.40**. I also award the Landlords cleaning expenses for the living room blind of **$30.00** as they were not cleaned at the end of the tenancy.

Although the Landlords argued that it was a term of the tenancy agreement that the Tenant was responsible for cleaning the propane fireplace annually, I find that this is not the case. I find that the amount claimed by the Landlords for cleaning and servicing the fireplace is a matter that falls under the Landlords' responsibility to repair and maintain under s. 32(1) of the Act and therefore this part of their application is dismissed without leave to reapply.

The Landlords also sought to recover a loss of rental income for the month of June 2011 as they claimed that due to the need to do extensive cleaning and repaint the entire rental unit, they were unable to rent it for that month. However, as I have found that the Landlords have not proven that they lost rental income due to an act or neglect of the Tenant, I find that this part of the Landlords' claim must be dismissed without leave to reapply.

The Landlords also sought to recover expenses for photographs and serving documents on the Tenant however the Act does not make any provision for the recovery of costs associated with preparing and attending dispute resolution hearings other than the recovery of the filing fee. Consequently, the Landlords' application to recover those expenses is dismissed without leave to reapply.

As the Landlords have made out a monetary claim for less than 10% of the amount they sought on their application, I find that this is not an appropriate case to order that the Tenant bear the cost of the $100.00 filing fee they paid for this proceeding. I Order the Landlords pursuant to s. 38(4) of the Act to keep the Tenant's security deposit and pet damage deposit (plus accrued interest) in partial payment of the damage award. The Landlords will receive a Monetary Order for the balance owing as follows:

	Damaged Carpeting:	$620.60
	Damaged Blinds:	$64.40
	Subtotal:	$685.00
Less:	Security Deposit:	($325.00)
	Pet Deposit:	($100.00)
	Accrued Interest:	($15.04)
	Balance Owing:	$244.96

Conclusion

The Decision and Order dated December 6, 2011 are set aside. A Monetary Order in the amount of **$244.96** has been issued to the Landlords and a copy of it must be served on the Tenant. If the amount is not paid by the Tenant, the Order may be filed in the Provincial (Small Claims) 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 *Residential Tenancy Act.*

Dated: March 05, 2012.

Residential Tenancy Branch

Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

CNC

Introduction

This hearing dealt with the Tenant's application cancel a *10 Day Notice to End Tenancy for Cause* (the Notice) issued February 28, 2012.

The parties gave affirmed testimony and had an opportunity to be heard and respond to other party's submissions.

It was established that the Landlord received the Notice of Hearing documents on March 6, 2012.

It was also established that the Tenant was served with the Notice to End Tenancy on February 29, 2012.

Issue to be Decided

Should the Notice issued February 28, 2012, be cancelled?

Background and Evidence

The parties were in agreement to the following facts:

- This is a month-to-month verbal tenancy agreement.
- Monthly rent is $700.00 per month, due on the third Wednesday of each month.
- The rental unit is a bachelor suite with no bedroom.
- The Tenant paid a security deposit in the amount of $350.00 at the beginning of the tenancy.
- Neither party is certain when the tenancy began, but believe it was nearly a year ago.
- There is no agreement with respect to whether or not the Tenant can smoke inside her residence.

The Landlord gave the following testimony:

The Landlord testified that he believes the Tenant is smoking drugs and cigarettes inside the rental unit. He stated that he went to speak to her about it and her roommate answered the door. The Landlord stated that he didn't give the Tenant permission to have a roommate. He stated that the rental unit is too small for more than one person to live there.

The Landlord testified that he told the Tenant that no other occupants were allowed, but that there are now two unauthorized people living in the suite. The Landlord testified that the unauthorized occupants get mail delivered to the rental unit. The Landlord testified that the Tenant and her roommates and guests are noisy and that they disturb the other occupants in the building.

The Landlord's Witness gave the following testimony:

The witness testified that he and his wife moved into a suite in the rental property in November, 2011. He stated that the Tenant smokes inside the rental unit, which travels through the vents and into his home. He submitted that her smoking is affecting his health and the health of his wife. The witness testified that he has spoken to her about how the smoke is bothering him, but she will not stop smoking in the rental unit.

The witness testified that there is "a lot of activity" at the rental unit and it is noisy until midnight which disturbs him and his wife. He stated that he has talked to the Landlord and to the Tenant about the noise, but it hasn't helped.

The witness testified that he thinks there are drug deals happening at the rental unit because a young man comes by a lot and stays for only a minute and then leaves with his hand in his pocket as though he is concealing something.

The witness testified that three times "someone" has stolen his empty bottles that he stacks outside. The witness stated that he has not seen who is doing it.

The witness stated that he moved from a noisier place and that the Tenant's smoking is the main problem.

The Tenant gave the following testimony:

The Tenant testified that she sometimes has visitors and an over-night guest, but that no one else is living at the rental unit. She stated that no one has ever spoken to her about noise, but that she is aware that her smoking is bothering the other occupants in

the rental property. The Tenant stated that she is trying to quit smoking and agreed not to smoke inside the rental unit anymore.

Analysis

The onus is on the Landlord to prove, on the balance of probabilities, that the tenancy should end for the reasons noted on the Notice. The Notice indicates three reasons for ending the tenancy:

1. The Tenant has assigned or sublet the rental unit without the Landlord's written consent.
2. The Tenant has allowed an unreasonable number of occupants in the rental unit.
3. 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 Landlord did not provide any evidence that the Tenant has assigned or sublet the rental unit. The Tenant is still living in the rental unit. Therefore this reason to end the tenancy is not proven.

I find that the Landlord has not provided sufficient evidence that there are a reasonable number of occupants in the rental unit. As explained to the parties, the Tenant is entitled to have guests in her own home, but must ensure that they do not disturb other occupants or the Landlord. I find that the Landlord did not provide sufficient evidence to end the tenancy for this reason.

The Landlord did not provide sufficient evidence with respect to the third reason to end the tenancy. He did not provide evidence that he had warned the Tenant about noise (for example written warning), and I find that the witness's testimony was very vague with respect to noise violations. There were no dates provided, and the witness indicated that he has lived in noisier situations. The witness stated that his main concern was the fact that the Tenant's second hand smoke was affecting his health.

I find that there is insufficient evidence that the Tenant or a person permitted on the property by the Tenant has significantly interfered with or unreasonably disturbed another occupant or the Landlord by being noisy. There was no agreement between the parties that the Tenant would not be allowed to smoke in the rental unit when her tenancy began. However, the Tenant has agreed not to smoke inside the rental unit from now on because she recognizes that it is bothering the other occupants of the building.

I find that the Landlord has not provided sufficient reasons to end the tenancy and therefore, I find that the Notice in not a valid notice.

I grant the Tenant's application to cancel the Notice to End Tenancy. The tenancy remains in full force and effect until it is ended in accordance with the provisions of the Act.

Conclusion

The Notice to End Tenancy issued February 28, 2012, is cancelled. The tenancy remains in full force and effect until it is ended in accordance with the provisions of the Act.

The Tenant has indicated her agreement not to smoke inside the rental unit. Therefore, I find that this is an enforceable term of the tenancy agreement from now on.

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: March 26, 2012.

Residential Tenancy Branch

Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC

Introduction

This hearing dealt with an application by the tenant to cancel a notice to end tenancy for cause.

Both parties participated in the conference call hearing.

Issue(s) to be Decided

Is the tenant entitled to any of the above under the Act.

Background and Evidence

This tenancy began February 1, 2011 with monthly rent of $1010.00 and the tenant paid a security deposit of $505.00.

On February 29, 2012 the landlord served the tenant with a 1 Month Notice to End Tenancy for Cause:

- The tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord.
- The tenant has adversely affected the quiet enjoyment, security, safety or physical well-being of another occupant or the landlord.

The landlord stated at the onset of the hearing that the tenant had not served the hearing documents in accordance with the *Act* as the hearing documents were prepared March 5, 2012 and not served on the landlord until March 15, 2012, well outside the 3 day time limit.

The landlord also stated that as of March 1, 2012 the property management company for this property had changed hands and the application was amended.

The landlord testified that they have received numerous noise complaints from other tenants in the building in relation to this tenancy and that one tenant vacated because of the noise. The landlord stated that the complaints started in the fall of 2011 and that on November 4, 2011 and again on November 7, 2011 the tenant was issued a warning letter.

The tenant testified that she had never received either of the warning letters that the landlord claims to have served the tenant. The landlord responded by stating that in the previous hearing the tenant said that she had received one but not both of the warning letters. The landlord said she had personally served both warning letters on the tenant and had advised the tenant that the landlord's next step would be to issue a notice to end tenancy.

The landlord stated that after receiving more written complaints from other tenants about noise, the smell of marijuana and excessive traffic coming in and out of the tenant's rental unit in February 2012, the landlord issued a notice to end tenancy for cause to the tenant. Written complaints were received February 20 and 23 by different tenants who all state the same concerns of possible illegal activity in the tenant's rental unit, noise and non-tenants being allowed unrestricted access to the building. The landlord stated that on one occasion the police were called to check on possible illegal activity and 2 of the individuals who had just been at the tenants were arrested for selling drugs. The landlord stated that she can also see the rental property from her residence and often sees the traffic coming to the building to go to the tenants.

The landlord stated that they discovered a posting the tenant placed on Craigslist on March 14, 2012 where the tenant asks for legal assistance to sue the landlord and the resident manager for discrimination and harassment. In the posting the tenant states the full name of the resident manager, names the property company and makes disparaging comments about both. The landlord stated that she is very concerned that this posting is still on the internet and how it may affect her directly as she takes great care to be a professional in her duties as resident manager.

The tenant stated that she does not smoke marijuana and does not allow her friends to smoke marijuana in her rental unit. The tenant maintained that the traffic to her rental unit is friends helping her out with grocery money. The tenant stated that she had 'no idea' how or who placed the posting on Craigslist and that perhaps someone she knew had posted it. When asked about the personal content of the posting and how someone she knew would have that level of detail, the tenant did not comment. The tenant did state that she had felt threatened by the landlord as the landlord stated her security deposit may not be returned.

The landlord per section 55 of the Residential Tenancy Act verbally requested an order of possession for the rental unit effective 2 days after service upon the tenant. The landlord stated that if the April 2012 rent is paid in full by 11:00AM, Monday April 2, 2012, the landlord will allow the tenant to remain in the rental unit until April 30, 2012.

Analysis

Based on the documentary evidence and undisputed testimony of the parties, I find on a balance of probabilities that the landlord has met the burden of proving that they have grounds to have the notice to end tenancy for cause upheld.

The landlord has issued 2 written warnings notices to the tenant after receiving multiple complaints about excessive noise coming from the tenant's rental unit. The landlord also continues to receive written complaints from other tenants in the building as the excessive noise in and foot traffic to the tenant's rental unit continues.

More disconcerting however is the Craigslist posting that the tenant or an associate of the tenants placed where disparaging comments are made about the resident manager and property management company and states the resident manager's full name. It is recognized that the tenant may not look favourably upon the landlord at this time, however a posting of this nature, purposely made public on the internet has the potential to have a strong negative impact on the landlord and significantly interfere with the landlords ability to conduct their business. This posting has also had a very negative impact on the resident manager who expressed great concern over the matter.

Therefore based on the above, I find that the landlord has met the burden of proving that they have cause to end this tenancy.

Conclusion

The tenant's application is hereby dismissed without leave to reapply.

I hereby grant the landlord an **Order of Possession**, effective **2 days** after service of the Order upon the tenant(s). This Order must be served on the tenant(s) and 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 *Residential Tenancy Act*.

Dated: March 29, 2012

Residential Tenancy Branch

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Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, MNSD, OLC, ERP, RP, PSF, LRE, LAT, RR

Introduction

This hearing dealt with an application by the tenant for money owed or compensation due to damage or loss, return of the security deposit, for the landlord to comply with the Act, for the landlord to make emergency repairs, for the landlord to make repairs, for the landlord to provide services, suspend or set conditions on the landlord's right to enter, authorize a tenant to change the locks and allow a tenet to reduce rent for repairs. Both parties participated in the conference call hearing.

Preliminary Issue(s) to be Decided

The parties named by the tenant on the Schedule of Parties: Pinnacle International Inc., Alex Cioara and Balazs Szebenyi state in documentation that they should not be personally named as respondents for the tenancy at the dispute address and request that their names not be attached to the tenant's claim. It was verified that the landlords to be named in this application are Shaughnessy Management Inc., and Pinnacle International Inc.

As this tenancy ended on March 14, 2012, the tenants claim for the landlord to comply with the Act, for the landlord to make emergency repairs, for the landlord to make repairs, for the landlord to provide services, suspend or set conditions on the landlord's right to enter, authorize a tenant to change the locks and allow a tenet to reduce rent for repairs are hereby dismissed without leave to reapply as there is no tenancy on which to enforce these actions.

Background and Evidence

This fixed tenancy began November 1, 2011 with monthly rent of $875.00 and the tenant paid a security deposit of $225.00.

Matters related to this tenancy were heard February 28, 2012; the hearing dealt with cross applications by the landlord and tenant. The Dispute Resolution Officer ruled in favour of the landlord and granted the landlord an order of possession and monetary

order for unpaid rent. The tenant belongings were then removed from the rental unit on March 14, 2012 by bailiffs, under a writ of possession order.

Security Deposit

The tenant testified that she has not yet provided the landlord with a forwarding address for return of the security deposit. The tenant stated that the landlord could use the dispute address as her forwarding address and could have used this same address for service of documents however the tenant has not yet applied to have her mail forwarded by Canada Post. The tenant also commented that the landlord could have phoned the tenant and requested a forwarding address.

It is the tenant's responsibility to provide the landlord with a forwarding address in writing and request return of the security deposit. Then, if the landlord does not return or claim against the security deposit within 15 days of receipt of the forwarding address, the tenant may submit an application for return of the security deposit. As the tenant has not yet provided the landlord with their forwarding address in writing, this portion of the tenant's application is dismissed with leave to reapply.

Monetary Claim

The landlord testified that during the tenancy there were on-going issues with noise, the tenant removing electrical fixtures and plumbing issues due to the tenant flushing paper towels down the toilet. The landlord stated that the tenant did not pay the full security deposit as required by the Act, the December 2011 rent cheque was returned NSF and the tenant did not pay the January, February or March 2012 rent.

The landlord stated that after the tenant was served with a notice to end tenancy that the tenant started to make complaints regarding the heat, tenants smoking, noise from the laundry room etc.

The tenant testified that the temperature in the rental unit went as low as 45f and that if you did not stand by the radiator there was no heat and no way to stay warm. The tenant maintained that the halls, bathroom, bedroom and closets in the rental unit were all very cold. The tenant stated that she did not use a space heater as staff from BC Hydro had advised her that her electricity bill would 'sky rocket'.

The landlord stated that after receiving a complaint from the tenant regarding the temperature in the rental unit the landlord went to the rental unit and verified that the temperature was 25c. The landlord stated that the entire building is heated by one large boiler and the landlord has not had complaints regarding the heat from any other tenants.

The tenant stated that she was without a toilet for 3 days and no tub for 11 days. The landlord responded by stating that they had noticed a leak 3 days after the tenant had

moved in and when they investigated, they found that the tenant had plugged the toilet with paper towels; the landlord stated that the toilet was fixed that same day. The landlord also stated that there were no issues with the tub and no additional issues with the toilet.

The tenant stated that tenants all throughout the building smoke and the landlord does nothing about it. The tenant stated that people stand in front of the building doors smoking and that the landlord has not posted signs to keep back 6 metres from the doors and windows. The landlord stated that all tenants in the building have signed an agreement to not smoke in the building and that the landlord has never found tenants smoking inside. The landlord stated that when he sees people outside but near the building doors smoking he asks them to move away from the area.

The tenant also stated that there was constant noise from the laundry room which the landlord did nothing about. The landlord referred to a photograph that shows a sign for the laundry room with hours of 9:00AM to 9:00PM; the tenant responded that this notice had not been posted until February 2012. The landlord stated that the tenant came and looked at the rental unit on 3 different occasions, had been very happy with it and that the tenant was very aware of the location of the unit in the building

The tenant stated that a tenant in the building who owned a truck also disturbed her peace and quiet enjoyment as he would turn on his headlights which would shine briefly on the tenant's windows.

The tenant stated that the landlord mis-represented the building and rental unit to the tenant and this is a typical of this landlord. The tenant stated that due to her medical conditions the lack of heat and cigarette smoke compromised her health even more and that she would never have rented here if the landlord had been truthful. The tenant went on to state that if the landlord had agreed to let her out of her lease or reduce her rent, these matters could have been resolved.

The tenant referred to numerous other issues which had no bearing on this matter such as people not knowing the tax act, being a victim of a crime and Russian criminals residing in the building. The tenant also refuted the landlord's testimony as all being false.

Analysis

Based on the documentary evidence and testimony of the parties, I find on a balance of probabilities that the tenant has not met the burden of proving that they have grounds for entitlement to a monetary order for a lack of heat in the rental unit, services or facilities not provided or disturbance of the tenant's peace and quiet enjoyment.

The landlord testified that they attended the rental unit and verified the heat in the tenant's rental unit to be 25c which is above the City of Vancouver bylaw guideline of 22c. The landlord has submitted a photograph of the thermostat in the tenant's rental unit which shows the temperature to be 25c. The tenant relies specifically on their oral testimony and has not provided any supporting evidence such as dates when the heat was below 22c or witness statements from other tenants in the building who also had issues with the temperature. The tenant has also not provided a witness statement from a professional to verify below standard heat in the rental unit.

In regards to the plumbing in the rental unit not working, the landlord has submitted evidence which is a copy of a warning letter to the tenant regarding the tenant plugging the toilet with paper towels. The landlord testified that the problem was also fixed the same day it came to their attention. As the issues with the plumbing were a result of the tenant's actions, the tenant is not entitled to compensation.

In regards to the faulty lighting, the landlord has submitted a photograph and copy of a warning letter to the tenant regarding the tenant disconnecting electrical fixtures and creating a fire danger in the rental unit. As the issues with the electrical fixtures were a result of the tenant's actions, the tenant is not entitled to compensation.

The tenant's claim that the landlord committed fraud and grossly misrepresented the rental unit and that because if this the tenant's already compromised health was compromised even more. It must however be considered that when a person has health issues, that they be responsible for ensuring that their living accommodations meet their needs and it is unreasonable to assign this responsibility to the landlord who has at best, limited knowledge of the tenant's medical concerns. It must also be noted that the tenant viewed the rental unit and building no less than 3 times prior to entering into a tenancy agreement and was very aware of the rental unit and its surroundings.

The tenant's application is dismissed in its entirety without leave to reapply.

Conclusion

The tenant's application is dismissed in its entirety.

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: March 28, 2012

Residential Tenancy Branch

Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPC FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the Landlords to obtain an Order of Possession for Cause and to recover the cost of the filing fee from the Tenant for this application.

Service of the hearing documents, by the Landlords to the Tenant, was done in accordance with section 89 of the *Act*, sent via registered mail on February 15, 2012. Mail receipt numbers were provided in the Landlords' evidence. The Tenant is deemed to be served the hearing documents on February 20, 2012, the fifth day after they were mailed as per section 90(a) of the *Act*.

The parties appeared at the teleconference hearing, acknowledged receipt of evidence submitted by the other and gave affirmed testimony. During the hearing each party was given the opportunity to provide their evidence orally, respond to each other's testimony, and to provide closing remarks. A summary of the testimony is provided below and includes only that which is relevant to the matters before me.

Issue(s) to be Decided

1. Have the Landlords issued and served a valid 1 Month Notice to End the Tenancy in accordance with section 47 and 52 of the *Residential Tenancy Act* (the Act)?
2. If so, have the Landlords met the burden of proof to end this tenancy and obtain an Order of Possession?

Background and Evidence

The parties entered into a fixed to tenancy agreement that began on May 1, 2009 and switched to a month to month tenancy after April 30, 2010, for a rental unit that consists of the main floor of a house. Rent is payable on the first of each month in the amount of $929.00 and on or before May 1, 2009 the Tenant paid $450.00 as the security deposit.

The Landlord's Agent affirmed that when she attempted to rent out the lower suite in early January 2012 it came to her attention that there was an overwhelming marihuana smell coming from the main floor and that there was a cat inside the main floor unit. Their tenancy agreement does not allow for pets; therefore the Tenant is breaching a material term of their agreement. They referenced their evidence which included written statements from proposed tenants who came to view the lower suite and from the Landlords which all confirm the presence of either marihuana smoke and/or the cat.

The Landlord's Agent affirmed they had attended dispute resolution on January 4, 2012 at which time it was determined that they had served the Tenant with a warning letter and an eviction notice at the same time. As per the copy of the January 5, 2012 decision provided in their evidence, the Landlords' application was dismissed. In that decision the Dispute Resolution Officer wrote:

> *"The Tenant understands that if the presence of a cat or smoking marihuana on the property is verified by the Landlord in the future, the record of these events would form part of the Landlord's case should it again come before a dispute resolution officer for consideration".*

The Landlord issued and personally served the Tenant a 1 Month Notice to End Tenancy (the Notice) on January 30, 2012 at 5:30 p.m.

The Tenant confirmed receipt of the Notice. She responded to the Agent's testimony by saying there is no cat in her unit and there has not been marihuana smoking in her unit since the previous hearing because her ex-spouse no longer lives at the rental unit. She confirmed she did not submit evidence in response to the Landlord's application. She argued the Landlord's evidence was the exact same photo they had used in the previous hearing and that they simply wrote a different date on it. She then began to attack the veracity of the Agent and Owners.

The Landlord's Agent noted that in the previous hearing the Tenant had assured that dispute resolution officer that the cat had been removed and the marihuana smoking had stopped. The Agent stated that she has seen the cat in the window herself, since the January 4, 2012 hearing, and when she was there the Tenant walked to the window, turned her back to her and walked away with the cat. Ever since then the Tenant has been keeping her drapes closed. The basement suite is currently vacant therefore the marihuana smell can only be coming from the upper unit.

The Landlords are seeking to end this tenancy in accordance with their Notice and requested an Order of Possession for as soon as possible.

Analysis

Upon review of the Notice to End Tenancy, I find the Notice to be completed in accordance with the requirements of section 52 of the Act and I find that it was served upon the Tenant in a manner that complies with section 88 of the Act.

The 1 Month Notice to End Tenancy cited the following reasons for issuance:

The tenant or a person permitted on the property by the tenant has:

- Significantly interfered with or unreasonably disturbed another occupant or the landlord

Tenant has engaged in illegal activity that has, or is likely to:

- jeopardize a lawful right or interest of another occupant or the landlord

Breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so

Tenant knowingly gave false information to prospective tenant or purchaser of the rental unit/site or property/park

Non-compliance with an order under the legislation within 30 days after the tenant received the order or the date in the order

I favor the evidence of the Landlords and their Agent, who provided affirmed testimony that they each have seen a cat in the window inside the Tenant's rental unit since the January 4, 2012 hearing; over the evidence of the Tenant who provided no evidence and resorted to name calling of the Landlords and their Agent. I favored the evidence of the Landlords over the Tenant, in part, because the Landlord's evidence included written statements from prospective tenants who came to view the basement suite and who had nothing to gain from providing their written statements. In my view the preponderance of consistent evidence submitted by the Landlords lends credibility to all of their evidence.

In *Bray Holdings Ltd. V. Black* BCSC 738, Victoria Registry, 001815, 3 May, 2000, the court quoted with approval the following from *Faryna v. Chorny* (1951-52), W.W.R. (N.S.) 171 (B.C.C.A.) at p. 174:

> *The credibility of interested witnesses, particularly in cases of conflict of evidence, cannot be gauged solely by the test of whether the personal demeanour of the particular witness carried conviction of the truth. The Test must reasonably subject his story to an examination of its consistency with the probabilities that surround the current existing conditions. In short, the real test*

of the truth of the story of a witness is such a case must be its harmony with the preponderance of the probabilities of which a practical and informed person would readily recognize as reasonable in that place and in those conditions.

I find the Tenant's response to be improbable. Given that the evidence supports the basement suite is empty the marihuana smoke cannot be coming from another tenant. Furthermore the preponderance of evidence of a cat in the window on January 9, 2012, leaves the Tenant's explanation that the cat was given away, prior to the January 4, 2012 dispute resolution hearing, to be improbable. Rather, I find the Landlords' evidence that there continues to be marihuana smoking in the rental unit and there continues to be a cat inside the rental unit, to be plausible given the circumstances presented to me during the hearing.

For all the aforementioned reasons, I find on a balance of probabilities the following:

Section 47(1)(e)(ii) of the *Act* stipulates that a landlord may end a tenancy if the tenant or a person permitted on the property by the Tenant has engaged in illegal activity that has, or is likely to, adversely affect the quiet enjoyment, security, safety or well-being of another occupant.

The evidence supports that either the Tenant or someone allowed on the property by the Tenant is smoking marihuana in the rental unit. As the Tenant has not established that they are legally entitled to possess marihuana, I find that they engage in illegal activity when they smoke marihuana in the rental unit.

Residential Tenancy Branch guidelines suggest that the smoking of marihuana should not be grounds for ending a tenancy unless it has been established that smoking marihuana has had a significant impact on other occupants in the residential complex or on the landlord's property. I find this guideline to be reasonable.

I find that the Landlord has submitted insufficient evidence to show that the smoking of marihuana in the rental unit has adversely affected the quiet enjoyment, security, safety, or physical well-being of another occupant, as there are currently no other occupants. On this basis, I find that the Landlord does not have grounds to end this tenancy pursuant to section 47(1)(e)(ii) of the *Act*.

Section 47(1)(h) of the Act stipulates that a landlord may end a tenancy if the tenant has failed to comply with a material term, and has not corrected the situation within a reasonable time after the landlord gives written notice to do so.

The evidence proves the Tenant was previously notified of her breach of a material term, in writing and in the January 5, 2012 decision, and she continues to breach the tenancy agreement by having a cat inside the rental unit.

Based on the aforementioned I find the Landlord has met the requirements of section 47(1)(h) of the Act to end this tenancy due to a breach of a material term. Therefore I award the Landlord an Order of Possession.

The Landlord has been successful with their application; therefore I award recovery of the $50.00 filing fee.

Conclusion

The Landlord's decision will be accompanied by an Order of Possession. This Order is legally binding and must be served upon the Tenant.

The Landlord may withhold the onetime award of the $50.00 filing fee from the Tenant's security deposit.

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: March 01, 2012.

Residential Tenancy Branch

Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC

Introduction

This hearing was convened on the tenant's application to have set aside a one-month Notice to End Tenancy for cause served on February 29, 2012 and setting an end of tenancy date of March 31, 2012.

Issue(s) to be Decided

This matter requires a decision on whether the Notice to End Tenancy should be set aside or upheld.

Background and Evidence

According to the rental agreement, this tenancy began on December 1, 2010 although they tenant believes she may have taken occupancy at some other time. The rental unit is operated by the Kiwanis Housing Society and rent is $350 per month. The landlord holds a security deposit of $175.

During the hearing, the landlord gave evidence that she had served the Notice to End Tenancy on February 29, 2012 after, when visiting the rental building, she detected a strong smell of marijuana emanating from the subject rental unit. She knocked on the door and advised the tenant that she would be issuing a Notice to End Tenancy for the breach.

She stated that the tenant had conceded the point that she had been smoking the marijuana by saying yes, but the tenant her meaning was an expression of surprise and question.

The landlord stated that she has verbally cautioned the tenant. While she did not see the tenant using marijuana in this instance, she believed that because of the odour and a similar incident in April of 2011, she was quite certain it was from the subject tenant's rental unit.

In both the April 2011 incident and the February 29, 2012 incident the landlord notified police.

The tenant stated that she had not smoked marijuana on either occasion and that she believes that the odour came from another unit and was attributed to her in error.

Analysis

Section 47(1)(e)(ii) of the *Act* provides that a landlord may issue a Notice to End Tenancy for cause in circumstances in which the tenant has engaged in an illegal activity that 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."

Residential Tenancy Police Guideline 32 advises that:

> "In considering whether or not the illegal activity is sufficiently serious to warrant terminating the tenancy, consideration would be given to such matters as the extent of interference with the quiet enjoyment of other occupants, extent of damage to the landlord's property, and the jeopardy that would attach to the activity as it affects the landlord or other occupants.
>
> For example, it may be illegal to smoke a single marijuana cigarette. However, unless doing so has a significant impact on other occupants or the landlord's property, the mere smoking of the marijuana cigarette would not meet the test of an illegal activity which would justify termination of the tenancy."

In the present matter, I find that there is some doubt as to whether the subject tenant was responsible for the marijuana odour and the extent it interfered with other tenants in the incident in question. In addition, I am influenced by the assurance of the tenant that neither she nor any guests will smoke marijuana in the rental unit.

Therefore, I find that the Notice to End Tenancy of February 29, 2012 is set aside.

Conclusion

The Notice to End Tenancy of February 29, 2012 is set aside and the tenancy continues.

The tenant is cautioned that this matter would be taken into consideration if there were to be any further incidents of a similar nature and could possibly result in an end to the tenancy.

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: March 23, 2012.

Residential Tenancy Branch

Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, MNDC, FF

Introduction

This matter dealt with an application by the Tenant to recover a security deposit or alternatively an overpayment of rent, for compensation for damage or loss under the Act or tenancy agreement and to recover the filing fee for this proceeding.

Issue(s) to be Decided

1. Is the Tenant entitled to the return of a security deposit?
2. Is the Tenant entitled to recover an overpayment of rent?
3. Is the Tenant entitled to compensation and if so, how much?

Background and Evidence

This tenancy started on August 1, 2009 as a one year fixed term tenancy that continued on its expiry on a month-to-month basis. The Tenant and his family vacated on or about January 19, 2012 however the tenancy did not end until the end of that month. Rent was $1,743.50 per month plus $50.00 for parking which was payable in advance on the 1st day of each month. The Tenant paid a security deposit of $840.00 at the beginning of the tenancy.

The Tenant said that when he and his family returned from a two week vacation on January 1, 2012, they could smell a strong odour of what they believed was cigarette smoke in the rental unit. The Tenant said the Landlord does not permit smoking inside the rental units. The Tenant said he ventilated the rental unit for approximately 8 days by leaving open windows and doors. On January 9, 2012, the Tenant mentioned the smell of the smoke to a building manager who then spoke to the downstairs tenant and gave them a verbal warning.

The Tenant said he also spoke with the downstairs tenants the following day to discuss the matter and discovered that they were smoking "shisha" from a water pipe. The Tenant said despite the warning to the downstairs tenants, they continued to smoke inside and he and his family could still smell the smoke especially at night which kept them awake. The Tenant said both his spouse and his son suffer from asthma which is

often triggered by smoke. The Tenant said on January 11, 2012 his son was suffering from an asthma attack and had to stay home from school. Consequently, the Tenant said he made a second verbal complaint to the building manager about the downstairs tenants smoking and she again gave them a verbal warning.

The Tenant said he and his family continued to smell smoke so he made a written complaint to the building manager on January 13, 2012. The Tenant said the smoke was giving himself and his family headaches and making them feel dizzy so they continually had to ventilate their rental unit by leaving the windows open even though it was very cold outside. The Tenant said on January 15, 2012, the building manager approached his spouse when she saw that she was crying and was advised by his spouse that she was distressed by the constant smell of smoke which was making her feel ill and depriving her of sleep. As a result, the Tenant's spouse asked if they could move to another suite. The resident manager advised the Tenant that he and his family could use a vacant suite temporarily to sleep in. The Tenant said he and his family used the vacant suite to sleep in for 4 days but during the day hours they could not tolerate the constant smell of smoke so they avoided being in the rental unit.

The Tenant said on January 15, 2012, he made a second written complaint to the building manager but the smell of the smoke persisted. Consequently, the Tenant said he did not believe the Landlord was taking his complaints seriously or that the problem was not going to be dealt with so on January 19, 2012 he rented other premises nearby and moved in there. The Parties agree that on January 23, 2012, the Tenant gave the Landlords his written notice ending the tenancy. The Parties conducted a move out inspection on January 31, 2012 and the Tenant provided his forwarding address in writing at that time.

The Tenant said approximately two weeks later, he received a Move Out Statement from the Landlord. The Tenant said the Landlord had put through a pre-authorized payment for February 2012 rent in the amount of $1,793.00 but returned only $871.50 of that amount. The Landlord's agent confirmed that the Landlord deducted from the Tenant's February pre-authorized payment $50.00 for parking and 14 days of pro-rated rent. The Landlord also returned the Tenant's security deposit. The Landlord's agent admitted that the Tenant did not give him authorization to deduct these amounts but claimed that the payment was put through because the Tenant did not give adequate notice. The Landlord's agent said the rental unit was re-rented as of February 13, 2012.

As a result of these events, the Tenant sought compensation for his and his family's loss of use and enjoyment of the rental unit for the month of January 2012, their moving expenses, fees associated with transferring a security system, the increased portion of his rent payment for the month of February 2012 and to recover the balance of the rent and parking payment retained by the Landlord.

The Landlord's agent argued that the Landlord's building manager was not aware of the smoke issue until January 9, 2012 and therefore could not be responsible for dealing

with an issue of which she was unaware. The Landlord's agent said as soon as the issue was brought to the building manager's attention on January 9, 2012, she immediately gave the downstairs tenant a warning. The Landlord's agent admitted that the building manager received written complaints from the Tenant on January 13 and 15, 2012. The Landlord's agent said the Tenant and his family were given permission to use a vacant suite on the 15th and a breach letter was served on the downstairs tenant on January 16, 2012. The Landlord's agent claimed that the downstairs tenant surrendered the water pipe to the building manager shortly thereafter. The Landlord's agent said the building manager inspected the downstairs suite sometime later and could not detect a smell of smoke only a strong smell of Pinesol cleaner. Consequently the Landlord's agent argued that there was no further smoking as of January 16, 2012 (which the Tenant denied).

As a result, the Landlord's agent argued that the Landlord did everything in its power to resolve the issue and did so within a reasonable time and that the "temporary discomfort" of the Tenant and his family did not entitled him to compensation or to end the tenancy early.

Analysis

Section 28 of the Act says that a tenant is entitled to quiet enjoyment of the rental unit which includes the right to exclusive possession and freedom from unreasonable disturbance.

I find that the Tenant did not tell the Landlord about the smoking until January 9, 2012. Consequently, the Landlord cannot be held liable for failing to take remedial steps during that time when it did not know about the problem. I also find that the building manager gave the downstairs tenant a verbal warning on January 9, 2012 not to smoke but that the tenant ignored that warning and continued to do so. I find that the Tenant made a second verbal complaint on January 11, 2012 which he followed up with written complaints on January 13 and 15, 2012. The Landlord claims that the downstairs tenant was served with a breach letter on January 16, 2012 and that the smoking stopped as of that date. The Tenant claims the smoking did not stop as of that date and that although the downstairs tenant delivered ***a*** water pipe to the building manager, he believes the tenants had another water pipe because he could still smell smoke up until the date he vacated.

I find that the Landlord acted reasonably in giving the downstairs tenant a verbal warning on January 9, 2012. I also find that the Landlord acted reasonably in delivering the downstairs tenants a breach letter on January 16, 2012 when it was apparent that they had ignored the previous verbal warnings. Although the Tenant argued that the downstairs tenants continued to smoke after January 16, 2012, this was denied by the Landlords and the Tenant provided no corroborating evidence to resolve this

contradiction. Although I too have reservations that the downstairs tenants owned only one water pipe, I find that there is insufficient evidence to conclude that they continued to smoke after January 16, 2012.

A Tenant may be entitled to compensation if the Landlord has breached a duty under the Act or tenancy agreement. In this case, I find that the Tenant and his family likely were significantly disturbed by the downstairs tenant's smoking from January 1 – 16, 2012 and in particular suffered from headaches, dizziness and in the case of his wife and son, breathing problems associated with asthma (which I would not characterize as "temporary discomfort.") However, for the reasons set out above, I cannot conclude that the Landlord's agents failed to take adequate steps to resolve this problem. Consequently, I find that the Tenant has not established a monetary claim for loss of use of the rental unit, for moving expenses, security system transfer fees and increased rent and those parts of his claim are dismissed without leave to reapply.

Although the Tenant moved out on or about January 19, 2012, rent was paid for the full month of January 2012. I find that although the Landlord had notice the Tenant was vacating as of January 23, 2012, the Landlord retained the Tenant's rent payment for February 2012 without his authorization and without an order for the Residential Tenancy Branch. Consequently, I find that the Tenant is entitled to recover an overpayment of rent (and parking fees) in the amount of $953.00 as well as the $50.00 filing fee for this proceeding.

The Landlord argued that the Tenant was not entitled to end the tenancy early however, as there was no claim for a loss of rental income from the Landlord before me, I make no findings on that issue. As the Tenant's security deposit was returned that part of the Tenant's claim is also dismissed without leave to reapply.

Conclusion

A Monetary Order in the amount of **$1,003.00** has been issued to the Tenant and a copy of it must be served on the Landlord. If the amount is not paid by the Landlord, the Order may be filed in the Provincial (Small Claims) 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 *Residential Tenancy Act*.

Dated: April 26, 2012.

Residential Tenancy Branch