**From:** Minister, EMH EMH:EX
**To:** OHCS Correspondence Unit OHCS:EX
**Subject:** draft reply FW: Second-Hand Smoke In Multi-Unit Dwellings
**Date:** Wednesday, October 17, 2012 11:06:22 AM

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-----Original Message-----
From: s.22
Sent: Thursday, September 13, 2012 9:36 PM
To: Minister, EMH EMH:EX
Subject: Second-Hand Smoke in Multi-Unit Dwellings

Dear Honourable Rich Coleman:

I want to urge you, as the Minster Responsible for Housing, to enshrine second-hand tobacco smoke as a breach of quiet enjoyment and a breach of the nuisance clause under the Strata Property Act. The research is unequivocal in its findings - there is no safe exposure to second-hand smoke. Your government has enacted legislation to protect people from second-hand smoke in the workplace. Why are not the approximately two million British Columbians who live in multi-unit dwellings afforded the same protection, 26 percent, or over 500,000 of whom are routinely exposed to second-hand smoke coming from a neighbour within their complex. Eighty-six percent of adult British Columbians are non-smokers and would prefer to live in a smoke-free building if given the option. Yet, there is a dearth of effective legislation to protect them from second-hand tobacco smoke. I also urge you to amend the Strata Property Act to make all new residential complexes smoke-free. This measure is an effective way to increase the multi-unit housing stock that is smoke-free as it is much easier to implement a smoke-free policy in a new building than it would be to convert an existing building. In doing so, it would still allow a strata council to pass a bylaw making the complex smoking if that is the wish of the owners. Thank you for your consideration in these matters.

Sincerely,

s.22

Drafted by: David Maxwell
Approved by: Greg Steves, ED, HPB√
CLIFF No.: 15848

s.22

Dear s.22

The Honourable Rich Coleman, Minister Responsible for Housing, has forwarded to me your August 28, 2012 e-mail regarding second hand smoke in multi unit buildings governed by the *Strata Property Act*. As Executive Director for Housing Policy, I am pleased to respond.

While I understand your concerns, I am confident that strata residents and councils have the tools needed to address issues related to smoking. The *Strata Property Act* provides for strata corporations to make decisions based on democratic principles and to pass their own bylaws (within certain parameters) to provide for the control, management, maintenance, use and enjoyment of the strata lots, common property and common assets of the strata corporation. These include the ability to adopt by a ¾ vote a non-smoking bylaw that bans smoking on the interior common property, on limited common property and inside strata lots. Additionally, non-smoking bylaws may be adopted by the owner/developer prior to the sale of any strata lots.

Bylaw 3(1) in the Schedule of Standard Bylaws to the *Strata Property Act*, that most stratas in British Columbia have kept or modified slightly, prohibits an owner, tenant, occupant or visitor from causing a nuisance or hazard to another person. This bylaw can be used to deal with a wide variety of situations. For example, loud noise, smoking or bad odours may all fall under this bylaw. Furthermore section 26 of the *Strata Property Act* requires that a Council enforce the bylaws. Where someone causes a nuisance, Council must enforce the bylaws by taking steps to deal with the nuisance. It is not simply an issue between neighbours.

You may be interested to know that the British Columbia Supreme Court case of *Raith v. Coles,* [1984] B.C.J. No. 772 (Q.L.), confirmed that no matter what bylaws are in place, the common law of nuisance allows a strata resident bothered by smoke to take another strata resident of the complex to court to request an order that the smoking cease.

Please be assured that the issue of smoking is one that we monitor and you may find the following link to a site designed to assist stratas with smoking issues of interest: http://www.smokefreehousingbc.ca/strata/index.html

Sincerely yours,

Greg Steves
Executive Director
Housing Policy Branch

Pc: Honourable Rich Coleman

## Lawrence, Judith OHCS:EX

**From:** Minister, EMH EMH:EX
**Sent:** Tuesday, September 4, 2012 10:00 AM
**To:** OHCS Correspondence Unit OHCS:EX
**Subject:** FW: Second-Hand Smoke in Multi-Unit Dwellings

**Follow Up Flag:** Follow up
**Flag Status:** Completed



Attention as appropriate

-----Original Message-----
From: s.22
Sent: Tuesday, August 28, 2012 8:46 PM
To: Minister, EMH EMH:EX
Subject: Second-Hand Smoke in Multi-Unit Dwellings

Dear Honourable Rich Coleman:

I want to urge you, as the Minster Responsible for Housing, to enshrine second-hand tobacco smoke as a breach of quiet enjoyment and a breach of the nuisance clause under the Strata Property Act.

The research is unequivocal in its findings - there is no safe exposure to second-hand smoke. Your government has enacted legislation to protect people from second-hand smoke in the workplace. Why are not the approximately two million British Columbians who live in multi-unit dwellings afforded the same protection, 26 percent, or over 500,000 of whom are routinely exposed to second-hand smoke coming from a neighbour within their complex.

Eighty-six percent of adult British Columbians are non-smokers and would prefer to live in a smoke-free building if given the option. Yet, there is a dearth of effective legislation to protect them from second-hand tobacco smoke.

I also urge you to amend the Strata Property Act to make all new residential complexes smoke-free. This measure is an effective way to increase the multi-unit housing stock that is smoke-free as it is much easier to implement a smoke-free policy in a new building than it would be to convert an existing building. In doing so, it would still allow a strata council to pass a bylaw making the complex smoking if that is the wish of the owners.

Thank you for your consideration in these matters.

Sincerely, s.22

Drafted by: David Maxwell
Approved by: Greg Steves, ED, HPB
CLIFF No.: 15985

s.22

Dear s.22

Thank you for your September 8, 2012 email regarding second hand smoke in multi unit buildings governed by the *Strata Property Act*.

While I understand your concerns, I am confident that strata residents and councils have the tools needed to address issues related to smoking. The *Strata Property Act* provides for strata corporations to make decisions based on democratic principles and to pass their own bylaws (within certain parameters) to provide for the control, management, maintenance, use and enjoyment of the strata lots, common property and common assets of the strata corporation. These include the ability to adopt by a ¾ vote a non-smoking bylaw that bans smoking on the interior common property, on limited common property and inside strata lots. Additionally, non-smoking bylaws may be adopted by the owner/developer prior to the sale of any strata lots.

Bylaw 3(1) in the Schedule of Standard Bylaws to the *Strata Property Act*, that most stratas in British Columbia have kept or modified slightly, prohibits an owner, tenant, occupant or visitor from causing a nuisance or hazard to another person. This bylaw can be used to deal with a wide variety of situations. For example, loud noise, smoking or bad odours may all fall under this bylaw. Furthermore section 26 of the *Strata Property Act* requires that a Council enforce its bylaws. Where someone causes a nuisance, Council must enforce the bylaws by taking steps to deal with the nuisance. It is not simply an issue between neighbours.

The British Columbia Supreme Court case of *Raith v. Coles,* [1984] B.C.J. No. 772 (Q.L.), confirmed that no matter what bylaws are in place, the common law of nuisance allows a strata resident bothered by smoke to take another strata resident of the complex to court to request an order that the smoking cease. You may find the following link to a site designed to assist stratas with smoking issues of interest: http://www.smokefreehousingbc.ca/strata/index.html

Please be assured that the issue of smoking is one that we monitor.

Sincerely yours,

Rich Coleman
Minister Responsible for Housing

15985

**From:** Minister, EMH EMH:EX
**To:** OHCS Correspondence Unit OHCS:EX
**Subject:** Draft reply FW: Second-Hand Smoke in Multi-Unit Dwellings
**Date:** Wednesday, October 17, 2012 10:26:26 AM

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**From:** s.22
**Sent:** Saturday, September 8, 2012 1:47 PM
**To:** Minister, EMH EMH:EX
**Cc:** s.22
**Subject:** Second-Hand Smoke in Multi-Unit Dwellings

Dear Honourable Rich Coleman:

I want to urge you, as the Minster Responsible for Housing, to enshrine second-hand tobacco smoke as a breach of quiet enjoyment and a breach of the nuisance clause under the Strata Property Act.

The research is unequivocal in its findings - there is no safe exposure to second-hand smoke. Your government has enacted legislation to protect people from second-hand smoke in the workplace. Why are not the approximately two million British Columbians who live in multi-unit dwellings afforded the same protection, 26 percent, or over 500,000 of whom are routinely exposed to second-hand smoke coming from a neighbour within their complex.

Eighty-six percent of adult British Columbians are non-smokers and would prefer to live in a smoke-free building if given the option. Yet, there is a dearth of effective legislation to protect them from second-hand tobacco smoke.

I also urge you to amend the Strata Property Act to make all new residential complexes smoke-free. This measure is an effective way to increase the multi-unit housing stock that is smoke-free as it is much easier to implement a smoke-free policy in a new building than it would be to convert an existing building. In doing so, it would still allow a strata council to pass a bylaw making the complex smoking if that is the wish of the owners.

Thank you for your consideration in these matters.

Sincerely,

s.22

Drafted by: David Maxwell
Approved by: Greg Steves, ED, HPB
CLIFF No.: 15997

s.22

Dear s.22

Thank you for your email of September 13, 2012 regarding second hand smoke in multi unit buildings governed by the *Strata Property Act*. I am pleased to respond.

While I understand your concerns, I am confident that strata residents and councils have the tools needed to address issues related to smoking. The *Strata Property Act* provides for strata corporations to make decisions based on democratic principles and to pass their own bylaws (within certain parameters) to provide for the control, management, maintenance, use and enjoyment of the strata lots, common property and common assets of the strata corporation. These include the ability to adopt by a ¾ vote a non-smoking bylaw that bans smoking on the interior common property, on limited common property and inside strata lots. Additionally, non-smoking bylaws may be adopted by the owner developer prior to the sale of any strata lots.

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You may find the following link to a site designed to assist stratas with smoking issues of interest: http://www.smokefreehousingbc.ca/strata/index.html

Please be assured that the issue of smoking is one that we monitor.

Sincerely yours,

Rich Coleman
Minister Responsible for Housing

## Crane, Bob OHCS:EX

**From:** Barlee, Veronica OHCS:EX
**Sent:** Thursday, September 6, 2012 5:24 PM
**To:** Page, Doug OHCS:EX; Maxwell, David OHCS:EX; Ko, Juliana B OHCS:EX; Crane, Bob OHCS:EX
**Subject:** link to BC website on smoke-free housing including a subsite for stratas

Hello,
An interesting website (stuffed with information) on smoke-free housing including an extensive subsite for stratas.

http://www.smokefreehousingbc.ca/strata/address.html

*best regards*
*Veronica Barlee*

MBA | Senior Policy Advisor | Housing Policy Branch | Office of Housing and Construction Standards
Ministry of Energy, Mines & Natural Gas (and Minister Responsible for Housing) | Government of British Columbia
Phone: 250.387.8843 Fax: 250.356.8182
Location: 5th floor, 614 Humboldt St, Victoria BC Canada | Mailing address: PO Box 9844 Stn Prov Govt, Victoria BC V8W 9T2

## Crane, Bob OHCS:EX

**From:** Barlee, Veronica OHCS:EX
**Sent:** Thursday, September 27, 2012 10:12 AM
**To:** OHCS Housing Policy Branch
**Subject:** Van condo tower bans smoking

Interesting development, a gig condo tower in Vancouver bans smoking by 91% vote.
http://www.globaltvbc.com/condo+building+in+vancouver+bans+smoking+inside/6442722988/story.html

*best regards*
*Veronica Barlee*

MBA | Senior Policy Advisor | Housing Policy Branch | Office of Housing and Construction Standards
Ministry of Energy, Mines & Natural Gas (and Minister Responsible for Housing) | Government of British Columbia
Phone: 250.387.8843 Fax: 250.356.8182
Location: 5th floor, 614 Humboldt St, Victoria BC Canada | Mailing address: PO Box 9844 Stn Prov Govt, Victoria BC V8W 9T2

Drafted by: David Maxwell
Approved by: Greg Steves, ED, HPB
CLIFF No.: 15997

s.22

Dear s.22

Thank you for your email of September 13, 2012 regarding second hand smoke in multi unit buildings governed by the *Strata Property Act*. I am pleased to respond.

While I understand your concerns, I am confident that strata residents and councils have the tools needed to address issues related to smoking. The *Strata Property Act* provides for strata corporations to make decisions based on democratic principles and to pass their own bylaws (within certain parameters) to provide for the control, management, maintenance, use and enjoyment of the strata lots, common property and common assets of the strata corporation. These include the ability to adopt by a ¾ vote a non-smoking bylaw that bans smoking on the interior common property, on limited common property and inside strata lots. Additionally, non-smoking bylaws may be adopted by the owner developer prior to the sale of any strata lots.

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You may find the following link to a site designed to assist stratas with smoking issues of interest: http://www.smokefreehousingbc.ca/strata/index.html

Please be assured that the issue of smoking is one that we monitor.

Sincerely yours,

Rich Coleman
Minister Responsible for Housing

From: Lam, Roger OHCS:EX

Sent: Friday, November 9, 2012 2:25 PM

To: Crane, Bob OHCS:EX; Maxwell, David OHCS:EX

Subject: FW: may we meet to discuss these recommendations re: smoking in

multi=unit dwellings?

Attachments: PS Smoke-Free MUDs.pdf

Hi Bob and David,

Greg advised that I ask who is most current on this topic. I would like to meet Shelley next week and

take one of you along.

Roger

From: Canitz, Shelley L HLTH:EX

Sent: Thursday, November 8, 2012 12:39 PM

To: Lam, Roger OHCS:EX

Subject: may we meet to discuss these recommendations re: smoking in multi=unit dwellings?

Hello, Roger – our ministry recently received this policy document and I'd like to walk through

the ones that fall within housing policy. Would you have a time next week we could meet to

discuss?

Many thanks

Shelley

Shelley Canitz

Director, Tobacco Control Program

Chronic Disease/Injury Prevention and the Built Environment I Population and Public Health I

Ministry of Health

250 952-2304

Join the Healthy Families BC community... http://www.health.gov.bc.ca/prevention/

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# Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

## DECISION

Dispute Codes CNC

Introduction

This matter dealt with an application by the Tenant to cancel a Notice to End Tenancy.

The Tenant said she served the Landlord with the Application and Notice of Hearing (the "hearing package") by personal delivery on August 10, 2012. Based on the evidence of the Tenant and Landlord, I find that the Landlord was served with the Tenant's hearing package as required by s. 89 of the Act and the hearing proceeded with all parties in attendance.

Issues(s) to be Decided

1. Is the Tenant entitled to an Order to cancel the Notice to End Tenancy?

Background and Evidence

This tenancy started on May 1, 2012 as a month to month tenancy. Rent is $750.00 per month payable in advance of the 1st day of each month. The Tenant paid a security deposit of $375.00 on May 18, 2012.

The Landlord said he served the Tenant with a 1 Month Notice to End Tenancy for Cause dated July 31, 2012 by personal delivery on July 31, 2012. The Effective Vacancy Date on the Notice is August 31, 2012. The Landlord said the Tenant is living in the unit and the Landlord said he wants to end the tenancy.

The Landlord said the reasons on the 1 Month Notice to End Tenancy are that the Tenant has additional people living in the unit, the Tenant has significantly interfered with or unreasonably disturbed the landlord, seriously jeopardizing health or safety of the landlord, putting the landlord property at significant risk, damaged the landlord's property, adversely affected the landlord quiet enjoyment and jeopardized a right or interest of the landlord.

The Landlord said there were four issues that lead to the issuing of the 1 Month Notice to End Tenancy and they are as follows:

1). The Tenant was late paying the rent for May and June, 2012. The Landlord said say the rent has been paid and there is no unpaid rent at the present time.

2). The Tenant had a cat living in the rental unit and the tenancy agreement and the advertisement for the unit says no pets were allowed. The Landlord said the tenancy agreement says no pets allowed, but the Landlord did not sent a copy of the tenancy agreement with the evidence. As well the Landlord said the ad for the rental unit said no pets, but the Landlord did not have a copy of the newspaper ad, he only had his hand written application for the newspaper ad. The hand written note for the ad application does say no pets and is requesting a non smoker.

3). The Tenant has additional people living in the unit. The Landlord said there is a male who comes and goes and stays with the Tenant on many occasions. The Landlord said the unit is a one bedroom and now the Tenant has three people living in it; the female Tenant, the male Tenant and the female Tenant's cousin.

4). The Tenants are smoking in the unit and in areas on the property that they have been told they cannot smoke in. The Landlord said he believes the Tenants are smoking marijuana in the unit and may be smoking cigarettes in the unit as well. The Landlord said he did agree that the Tenants could smoke outside away from the house and away from the air conditioner so that the smoke does not go into the house. The Landlord said the Tenants do smoke outside and they have put some furniture outside in an area that they smoke in.

The Landlord called a witness s.22 to corroborate his claims. The Witness s.22 said the Landlord asked him to watch the Tenants from his balcony which is next door. The Witness s.22 said he did this and he has seen the Tenant's cousin around the property many times in the evenings and in the following mornings, so he assumed that the Tenant's cousin was living with the Tenant. The Witness was unsure of the dates that he saw the Tenant's cousin. As well the Witness s.22 said he saw the Tenants smoking in the yard and he has smelled what he believes to be marijuana coming from the Tenants' rental unit. The Witness continued to say he has also seen a cat around the Tenants' rental unit, but he was unsure if the Tenants' actually owned the cat. The Witness said he has seen a cat around lately but he was not sure if it was the same cat as he saw earlier.

The Tenant said they had talked to the Landlord about these issues and they do not believe the Landlord has grounds to evict them for the following reasons:

1). The Tenant said there rent was paid late one month because of timing issues with the male tenant's E.I. application but there is no unpaid rent now and they will pay the rent on time on the 1st day of the month as agreed to in the tenancy agreement. The Tenants did not provide a copy of the tenancy agreement therefore the rent payment date could not be confirmed by either the Tenants or the Landlord.

2). The Tenant said they had rescued a cat caught in a trap and they only kept the cat for approximately one week. The Tenant said it was not their pet and the cat was removed from the rental unit at the end of July, 2012.

3). The Tenant said her cousin had stayed with them for approximately 1 week and then a few additional days just recently, but he is living at his girlfriends now and is not living in the rental unit nor did he living in the rental unit on a permanent basis previously.

4). The Tenants said regarding the smoking issue they do not smoke marijuana and they do not smoke inside the rental unit. The Tenants both said they talked to the Landlord and he said they could smoke outside, but not close to the house or the air conditioner. Both Tenants said they have complied with what the Landlord said about smoking. They said they only smoke outside in the smoking area.

The Tenants said they like living where they are and they have complied with the Landlords wishes. The Tenants said they did not ask the Landlord about the cat, but they did remove the cat as soon as the Landlord complained about it and it was not a pet, but a rescue situation. The Tenant said she knows that they should have asked the Landlord about the cat or they should not have taken it in. The Tenant also said they do not smoke marijuana and the Landlord and the Witness may be mistaking them for another neighbour that parties late at night and smokes marijuana. The Tenants said they like living at the rental unit, they get along with everyone and they are complying with the Landlord's rules. The Tenants requested that the Notice to End Tenancy be cancelled.

The Landlord said he is not mistaking the Tenants for the other neighbours who party and the Landlord said he wants to end the tenancy for the reasons he has stated.

Analysis

It is apparent from the testimony and evidence that there are issues between the Tenants and the Landlord. Consequently the parties will abide by the following decision. In Section 47 (d) of the Act uses language which is written very strongly and it's written that way for a reason. A person cannot be evicted simply because another occupant or the landlord has been disturbed or interfered with, they must have been **unreasonably** disturbed, or **seriously** interfered with. Similarly the landlord must show that a tenant has **seriously** jeopardized the health or safety or lawful right or interest of the landlord or another occupant, or put the landlord's property at **significant** risk.

In this case it is my finding that the reasons given for ending the tenancy have not reached the level of **unreasonableness, significance or seriousness** required by section 47 of the Residential Tenancy Act. As well, I find the Tenants have given affirmed testimony that they have adjusted their behaviour to comply with the Landlord's

rules and are willing to continue to comply with these rules; therefore I find that the Tenants have established grounds to receive and Order to Cancel the 1 Month Notice to End Tenancy for Cause date July 31, 2012. As well the Landlord issued a second 1 Month Notice to End Tenancy for Cause dated August 31, 2012, which does not have any reasons for the Notice to End Tenancy indicated on page two of the Notice; consequently that notice is not valid as all Notices to End Tenancy for Cause must have the reasons indicated on page two of the Notice. The Notice to End Tenancy dated August31, 2012 is cancelled as well and the tenancy is ordered to continue as set out in the Tenancy Agreement.

Conclusion

I order the 1 Month Notices to End Tenancy for Cause dated July 31, 2012 and August 31, 2012 are cancelled and the tenancy is ordered to continue as set out in the Tenancy Agreement.

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.*

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 for Dispute Resolution, seeking to cancel a Notice to End Tenancy issued for cause.

Both parties appeared at the hearing. The hearing process was explained and the participants were asked if they had any questions. Both parties provided 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.

Issue(s) to be Decided

Should the Notice to End Tenancy be cancelled?

Background and Evidence

On August 31, 2012, the Landlord served the Tenant with a one month Notice to End Tenancy for alleged illegal activity in the rental unit which adversely affected the quiet enjoyment, security, safety or physical well-being of another occupant or the Landlord, with an effective end date to the tenancy of September 30, 2012 (the "Notice").

The Landlords testified that the Tenant is smoking marijuana in the rental unit and has people visiting him at odd hours of the night. The Landlords have provided evidence that this behaviour has disturbed other renters in the building. For example, the smoke and smell travel up and disturb the renters in the unit above the subject rental unit.

The Tenant testified that he does smoke marijuana for medical purposes, although he agrees he has no legal authority to do so, which requires a license. The Tenant denies smoking int he rental unit at all and alleged that smoke from a neighbours' house must be travelling to the rental unit.

The Tenant explained one person had come to the rental unit in the middle of the night, however, that person was not invited and was intoxicated and did create a disturbance.

Analysis

During the course of the hearing the parties came to an agreement to resolve the dispute. The parties asked that the settlement be recorded and I provide this decision pursuant to section 63 of the Act.

The parties agreed that:

> The Tenant promised that he and any guests to the subject rental unit will not smoke marijuana in the rental unit or in proximity to the other renters in the property.
>
> The Tenant acknowledged this was his last chance and final warning not to smoke marijuana in the rental unit or to allow others in his rental unit to smoke it.
>
> The Tenant acknowledged this was his last chance and final warning that his guests must not disturb other occupants at the building.
>
> As a result of the promises made by the Tenant the Landlords agreed to withdraw the Notice.
>
> If the Tenant does not keep these promises the Landlords will issue another Notice to End Tenancy.

The parties are commended for reaching a mutual agreement.

This decision is final and binding on the parties, unless otherwise provided under the Act, and is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the Act.

Dated: October 05, 2012.

Residential Tenancy Branch

# Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

## DECISION

Dispute Codes: OPC, MNR, FF

Introduction

This hearing was scheduled in response to the landlord's application for an order of possession / a monetary order as compensation for unpaid rent / and recovery of the filing fee. The landlord's agent attended the hearing with the landlord and gave affirmed testimony on the landlord's behalf. Despite being served in-person on August 11, 2012 with the application for dispute resolution and notice of hearing (the "hearing package") the tenant did not appear.

As rent is currently paid in full to the end of September 2012, the landlord withdrew the application for a monetary order as compensation for unpaid rent.

Issue(s) to be Decided

Whether, under the Act, Regulation or tenancy agreement, the landlord is entitled to an order of possession and recovery of the filing fee.

Background and Evidence

Pursuant to a written tenancy agreement, the month-to-month tenancy began on March 4, 2008. Monthly rent of $650.00 is due and payable in advance on the first day of each month, and a security deposit of $320.00 was collected. An addendum to the tenancy agreement provides as follows:

- No smoking
- No pets
- Tenancy for 2 people

Pursuant to section 47 of the Act which speaks to **Landlord's notice: cause**, the landlord served the tenant with a 1 month notice to end tenancy for cause dated July 6, 2012. The notice was served in-person on the tenant on that same date. A copy of the

notice was submitted in evidence. Reasons shown on the notice for its issuance are as follows:

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:

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

The landlord's agent testified that despite repeated requests, and contrary to the requirements set out in the addendum to the tenancy agreement, the tenant has persisted in smoking tobacco and marijuana within the unit and immediately outside the unit. This behaviour has unreasonably disturbed the landlord, and has adversely affected the landlord's physical well-being, in addition to his quiet enjoyment. To date, the tenant has ignored the notice and continues to smoke.

Analysis

Based on the documentary evidence and the affirmed / undisputed testimony of the landlord through his agent, I find that the tenant was served with a 1 month notice to end tenancy for cause dated July 6, 2012. Thereafter, the tenant has not vacated the unit. Neither has the tenant filed an application to dispute the notice within the 10 day period available for doing same after receiving the notice. Accordingly, I find that the landlord has established entitlement to an order of possession.

As the landlord has succeeded in this application, I find that he has also established entitlement to recovery of the $50.00 filing fee. Accordingly, I hereby order that the landlord may do so by withholding this amount from the tenant's security deposit.

Conclusion

I hereby issue an **order of possession** in favour of the landlord effective not later than **two (2) days** after service on the tenant. This order must be served on the tenant. Should the tenant fail to comply with the order, the order may be filed in the Supreme Court of British Columbia and enforced as an order of that Court.

I hereby order that the landlord may withhold **$50.00** from the tenant's security deposit in order to recover the filing fee for this application.

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: September 12, 2012.

Residential Tenancy Branch

# Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

## DECISION

Dispute Codes CNC FF

Preliminary Issues

At the outset of this hearing two females signed into the hearing and identified themselves as an occupant of the strata building (witness 2) and her landlord (witness 1). The occupant confirmed she resides below the Tenants who are party to this dispute and was attending this hearing as witness (2) for the Landlord. Witness (1) confirmed she was not an agent for the Landlord and that her presence at the hearing was strictly as a witness.

The respondent Landlord had not signed into this hearing therefore I instructed both witnesses to disconnect from the hearing. I informed the witnesses that I would contact them if I needed to hear their testimony. Shortly afterwards the Landlord signed into the hearing and acknowledged that witness (1) called and told him that he needed to sign into the hearing.

Introduction

This hearing dealt with an Application for Dispute Resolution by the Tenants to obtain an Order to set aside a 1 Month Notice to end tenancy for cause and to recover the cost of the filing fee from the Landlord for this application.

The parties appeared at the teleconference hearing, acknowledged receipt of evidence submitted by the Tenants and gave affirmed testimony. At the outset of the hearing I explained how the hearing would proceed and the expectations for conduct during the hearing, in accordance with the Rules of Procedure. Each party was provided an opportunity to ask questions about the process however each declined and acknowledged that they understood how the conference would proceed.

During the hearing each party was given the opportunity to provide their evidence orally. 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. Should the Notice to end tenancy for cause be set aside?

Background and Evidence

The parties entered into a month to month tenancy agreement which began on July 1, 2012. Rent is payable on the first of each month in the amount of $1,100.00 and on July 1, 2012 the Tenants paid $550.00 as the security deposit.

The Landlord stated that he did not submit evidence in response to the Tenant's application. After a brief discussion the Landlord advised that the evidence received at the *Residential Tenancy Branch* which was marked received by the Lanldord was submitted by witness (1). The Tenant acknowledged receipt of the witnesses' evidence which included, among other things, a copy of the strata by-laws and e-mails between the occupant and her landlord.

The Landlord deposes that he issued the 1 Month Notice to end tenancy when the Tenants' behaviour failed to change after he issued them two written complaints. He said that he had received complaints from the occupant directly below the Tenants on July 7, 2012 saying the Tenants were yelling and fighting and again on July 21, 2012 complaining that there was excessive noise coming from their T.V. The Landlord could not provide evidence as to the time of day the incidents occurred but thought it may have been early evening.

The Landlord advised that the Tenants' rental unit is located on the second floor of a four story wood frame building that was constructed in approximately 2008.The units in the building are individually owned which and operated under strata by-laws. Each owner manages their own units if they have rentals. He acknowledged that there were occupants above, below, and on either side of the Tenants unit and that he has only ever received complaints from the occupant directly below.

The Landlord submitted that the second reason for issuing the notice relates to complaints that the Tenants were smoking on their balcony. He argued that the strata by-laws prohibit smoking on the deck; however, during the hearing the Landlord was not able to point to a rule in the by-laws which prohibits smoking on balconies. He did

however point to a section which stipulates that cigarette butts were not to be thrown off of balconies.

The Tenants submitted evidence outlining a chronological list of events, confirming receipt of the 1 Month Notice on July 28, 2012, and written statements from witnesses who confirmed the Tenants were out of town at times when two of the alleged occurrences took place. The Tenants acknowledged that the building manager informed them of complaints from the lower occupant and noted how the complaints were usually held onto for a few days and dropped off once several had accumulated.

The Tenants acknowledged that the building manager asked them if they smoked when they first moved into the building and told them they could smoke on their balcony if it did not disturb other occupants. Shortly afterwards their Landlord gave them a key to access the third floor patio and requested they smoke there. They were also requested to smoke inside their unit with a fan blowing the smoke outside. The Tenants stated that they had been working to quit smoking and have been smoke free for six weeks. They noted how the lower occupant is still complaining about cigarette smoke even though they no longer smoke.

The Landlord confirmed that the complaints were all received from the lower occupant and nothing from the other neighbouring occupants. He confirmed that he has never attended the rental unit immediately upon receiving such complaints and occupants of this building usually go to the building manager with their initial complaints which are later filtered to the Landlord and their tenants.

After consideration of the evidence presented during the hearing I did not feel it was necessary to bring the Landlord's witnesses back to provide oral testimony as they had provided written submissions for consideration.

Analysis

I have carefully considered the aforementioned and the documentary evidence that was before me.

When considering a 1 Month Notice to End Tenancy for Cause the Landlord has the burden to provide sufficient evidence to establish the reasons for issuing the Notice to End Tenancy.

The Notice was issued pursuant to Section 47(1) of the Act for the following reasons:

- Tenant or a person permitted on the property by the tenant has:
  - Significantly interfered with or unreasonable disturbed another occupant or the landlord
  - Seriously jeopardized the health or safety or lawful right of another occupant or the landlord

In this case, I find the Landlord has provided insufficient evidence to warrant upholding the Notice to end tenancy. I make this finding in part because the Landlord has relied solely on complaints from one occupant which related to noises of normal living (walking from room to room or noises coming from a television), during normal waking hours, and smoking in a building which is not designated as a non-smoking building. Furthermore, there was no evidence that indicated the Landlord or building manager did anything to determine if the complaints were warranted while there was disputing evidence which indicated that the Tenants were not even at the unit during alleged occurrences. Accordingly, I set aside the 1 Month Notice issued July 28, 2012.

The Tenants have been successful with their application; therefore I award recovery of the **$50.00** filing fee.

Conclusion

The 1 Month Notice to end tenancy issued July 28, 2012, is HEREBY CANCELLED, and is of no force or effect.

The Tenants may deduct the one time award of **$50.00** from their next rent payment, as full recovery of their filing fee.

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: September 10, 2012.

Residential Tenancy Branch

# Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

## DECISION

Dispute Codes:

**MNR, MNDC, MNSD, FF**

Introduction

This hearing was scheduled in response to the landlord's Application for Dispute Resolution, in which the landlord has requested compensation for unpaid rent, compensation for damage or loss under the Act, to retain all or part of the security deposit and to recover the filing fee from the tenant for the cost of this Application for Dispute Resolution.

Both parties were present at the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained, evidence was reviewed and the parties were provided with an opportunity to ask questions about the hearing process. They were provided with the opportunity to submit documentary evidence prior to this hearing, all of which has been reviewed, to present affirmed oral testimony and to make submissions during the hearing. I have considered all of the evidence and testimony provided.

Preliminary Matters

At the start of the hearing the landlord's claim was reduced to $1,094.70 for loss of rent revenue from July 1 to August 12, 2012. The balance of the claim was withdrawn.

Issue(s) to be Decided

Is the landlord entitled to compensation in the sum of $1,094.70 for loss of rent revenue?

May the landlord retain the deposit in partial satisfaction of the claim?

Is the landlord entitled to filing fee costs?

Background and Evidence

The parties agreed to the following facts:

- The 1 year fixed-term tenancy commenced on February 1, 2012;
- Rent was $785.00 per month, due on the first day of each month;
- A deposit in the sum of $392.50 was paid;
- On May 31, 2012, the tenant gave written notice ending the tenancy effective June 30, 2012; and
- That on May 31, 2012, the landord issued a letter to the tenant outlining liability for loss of rent revenue as a result of terminating the tenancy prior to the end of the fixed-term.

A copy of the written tenancy agreement was supplied as evidence.

The landlord outlined the on-going and specific advertising that occurred; effective August 13, 2012, new occupants moved into the rental unit.

The landlord supplied copies of popular web sites ads placed at the end of June, 2012. The rent was posted at $800.00 per month, vs. $785.00 the tenant was paying. The landlord stated that they had on-going ads for the building with rates starting at $785.00; that they had postings with the university and military and a referral service with current occupants, who can receive $150.00 for each new tenant they refer.

The tenant testified that she moved out due to marijuana smoke which was causing her health to suffer.

The parties confirmed that the tenancy agreement did not prohibit smoking in the rental unit. The landlord stated smoking was prohibited in the common areas only.

Analysis

Section 45(2) of the Act provides:

> *(2) A tenant may end a fixed term tenancy by giving the landlord notice to end the tenancy effective on a date that*
>
> > *(a) is not earlier than one month after the date the landlord receives the notice,*
> > *(b) is not earlier than the date specified in the tenancy agreement as the end of the tenancy, and*
> > *(c) is the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.*

In other words; a tenant may not end a fixed-term tenancy prior to the end date of the tenancy agreement.

Section 45(3) of the Act provides:

> *3) If a landlord has failed to comply with a material term of the tenancy agreement or, in relation to an assisted or supported living tenancy, of the service agreement, and has not corrected the situation within a reasonable period after the tenant gives written notice of the failure, the tenant may end the tenancy effective on a date that is after the date the landlord receives the notice.*

There was no evidence before me that the landlord had failed to comply with a material term of the tenancy. A tenant has the burden of proving there has been a material breach of a term of the tenancy. In the absence of a tenancy agreement term that prohibited occupants of the building from smoking in their units, I find that the tenancy ended in breach of the Act.

Section 7 of the Act provides:

> ***Liability for not complying with this Act or a tenancy agreement***
>
> ***7*** *(1) If a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.*
>
> *(2) A landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.*

I find that the advertising that occurred was sufficient and that the landlord has shown they took reasonable steps to locate new occupants within a reasonable period of time. In relation to the eventual ads which requested an additional $15.00 per month rent, i have considered Residential tenancy branch Policy, which suggests:

> *In all cases the landlord's claim is subject to the statutory duty to mitigate the loss by re-renting the premises at a reasonably economic rent. Attempting to re-rent the premises at a greatly increased rent will not constitute mitigation, nor will placing the property on the market for sale.*

I find that ads which were in effect from the point notice was given by the tenant, combined with the ads which listed specifically for the unit at what I find was not an unreasonable economic rent, was not prejudicial to the tenant. The rent requested was only $15.00 more than what the tenant had paid each month, an increase that I find is insignificant. Despite an immediate warning given to the tenant that she could be liable

for the loss of rent revenue the tenant did not assist in locating a new occupant, which may have minimized the loss the landlord experienced.

Therefore, I find that the landlord is entitled to loss of July 2012 rent revenue in the sum of $785.00 plus 12 days for August in the sum of $309.70.

I find that the landlord's application has merit and that the landlord is entitled to the fee that would have been imposed for claims under $5,000.00. Therefore, the landlord is entitled to the sum of $50.00, to be recovered from the tenant for the cost of this Application for Dispute Resolution.

I find that the landlord is entitled to retain the tenant's security deposit, in the amount of $392.50, in partial satisfaction of the monetary claim.

Conclusion

I find that the landlord has established a monetary claim, in the amount of $1,144.70, which is comprised of loss of July , 2102 rent and 12 days of August, 2012 rent plus $50.00 in compensation for the filing fee paid by the landlord for this Application for Dispute Resolution.

The landlord will be retaining the tenant's security deposit in the amount of $392.50, in partial satisfaction of the monetary claim.

Based on these determinations I grant the landlord a monetary Order for the balance of $752.20. In the event that the tenant does not comply with this Order, it may be served on the tenant, filed with the Province of British Columbia Small Claims Court and enforced as an Order of that Court.

This decision is final and binding on the parties, unless otherwise provided under the Act, and is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: September 18, 2012.

Residential Tenancy Branch

# Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

## DECISION

Dispute Codes CNC, MNDC, O, FF

Introduction

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

The hearing was conducted via teleconference and was attended by the tenant and the landlord

The parties agreed the tenant did not serve the landlord with notice of this hearing until October 17, 2012 despite the Application being made on September 20, 2012, however, the landlord had provided a substantial volume of evidence in response to the tenant's claim and indicated she was prepared to proceed with the hearing today. With agreement by both parties the hearing proceeded.

The parties also agreed the tenant is intending to vacate the rental unit on October 31, 2012 and there is no longer a need to dispute a notice to end tenancy. I therefore amend the tenant's Application to exclude the matter of disputing a notice to end tenancy for cause.

Issue(s) to be Decided

The issues to be decided are whether the tenant is entitled to a monetary order for compensation for loss of quiet enjoyment and to recover the filing fee from the landlord for the cost of the Application for Dispute Resolution, pursuant to Sections 28, 47, 67, and 72 of the *Residential Tenancy Act (Act)*.

Background and Evidence

The landlord has submitted a copy of a tenancy agreement signed by the parties on December 6, 2011 for a 1 year fixed term tenancy beginning on January 1, 2012 for a monthly rent of $1,500.00 due on the 1st of each month with a security deposit of $750.00 paid on December 15, 2011.

The tenant submits that as a result of the landlord's failure to ensure adequate security; failure to prevent the tenant being bothered by a neighbours smoking and failure to enforce a no pet rule in the residential property she has found it necessary to end the tenancy and seek compensation for the following:

1. Lost valuables resulting from a break-in in the tenant's storage locker in the amount of $3,300.00 as valued by the tenant's insurance company or in the alternative the $500.00 deductible if the tenant must seek compensation from her insurance;
2. Moving costs in the amount of $1,582.00 based on their move in costs; and
3. Moving costs to remove remaining items from storage locker in the amount of $180.00.

The tenant has provided no documentary confirmation of any of the above noted costs, estimates or valuations.

The tenant submits that there have been multiple vehicle break-ins in the garage; that there have been break-ins in the storage lockers and that they lost valuable possessions; that the landlord has failed to notify the tenant regarding the storage locker break-ins and that they found out about these things from other tenants.

The landlord provided evidence and testimony that although not yet complete they have been taking action on the security issues identified by the tenant and have changed the locks in the storage area and that they are looking at additional recommendations made by police after they had a police officer inspect and provide recommendations on how to improve security. The tenant testified that they have not yet implemented all of these recommendations.

The tenant states that many delivery people in the area have access codes to the building and as a result many non-residents can access the residential property and units at any time. The parties agree that at one time the tenant told the landlord that she had 8 codes that she had obtained to access the building. The landlord submits that they have been trying to get these codes from the tenant so they can deactivate them but that the tenant has not responded to their requests for them.

The tenant testified that she had lost all but one of the codes. The tenant provided the landlord with the one remaining code and the landlord submitted that she would deactivate it immediately. The tenant agreed that if she found the other codes she would provide them to the landlord for deactivation.

The tenant noted that the landlord would post notices on her door and because she travels she was concerned that a notice may be on her door for and provide evidence that no one was at the rental unit for periods of time when she was away. The landlord testified that once the tenant identified this notices were sent to her by email instead.

The landlord stated the tenant did not identify that the security issues were of that great of a concern to her until the landlord contacted the tenant in regard to the tenant's failure to pay rent for September 2012. The tenant testified that she had complained to agents for the landlord as well as to the strata management company agents verbally

about her concerns. The tenant states that she didn't pay rent because she wanted to get the landlord's attention because the landlord was not dealing with her complaints about security. The tenant acknowledges she did not advise the landlord that this was her reason for not paying rent until the landlord contacted her.

The tenant also submits that despite being told prior to signing the tenancy agreement that the building was dog free the tenants have had to deal with dogs and feces found on the residential property. The landlord testified that there are many pets in the building and she would have never identified the building as pet free. The tenancy agreement states: "Pets are permitted with approval, subject to local ordinances and must not disturb neighbours."

The tenant also asserts the landlord failed to stop a neighbouring tenant from smoking on his balcony despite the property being required to be smoke free resulting from a local municipal bylaw. The landlord submits there is not a municipal bylaw that requires the building be smoke free.

The landlord also explained that while there is a no smoking clause in the tenancy agreement for this tenant the building, itself, is not a smoke free building and they have stopped including that clause in tenancy agreements because there is no strata bylaw restricting smoking and because some of the units are owner occupied there is no ability for the landlord to enforce a smoking ban in the residential property.

The landlord also stated the neighbouring tenant does not have a no smoking clause in his tenancy agreement but she has received agreement from that tenant to smoke only when this tenant is not using her balcony. The tenant submits she cannot use the balcony because the neighbour is always out there smoking.

The landlord has submitted into evidence two newsletters from the strata management company to the residents – one dated May 29, 2012 and one dated August 24, 2012. The tenant referenced the section of the May 29, 2012 newsletter speaking about vehicle break-ins and I noted in the hearing that there is reference in the newsletters about no-smoking in common areas and balconies.

Analysis

To be successful in a claim for compensation for damage or loss the applicant has the burden to provide sufficient evidence to establish the following four points:

1. That a damage or loss exists;
2. That the damage or loss results from a violation of the *Act,* regulation or tenancy agreement;
3. The value of the damage or loss; **and**
4. Steps taken, if any, to mitigate the damage or loss.

Section 28 of the *Act* states a tenant is entitled to quiet enjoyment including, but not limited to, rights to reasonable privacy; freedom from unreasonable disturbance; exclusive possession of the rental unit subject only to the landlord's right to enter the rental unit in accordance with Section 29; and use of common areas for reasonable and lawful purposes, free from significant interference.

From the evidence before me regarding the theft of the tenant's belongings from the storage locker, I note that in the May 29, 2012 newsletter submitted into evidence there is mention of vehicle break-ins but no such reference to storage locker break-ins. It is not until the August 24, 2012 newsletter that a reference to building security mentions that as a result of cooperative effort of tenants there has been a reduction of storage locker break-ins.

From the landlord's evidence there is an email dated July 4, 2012 providing instruction to s.22 to contact the tenant in s.22 to advise that their storage locker was broken into and a further email on July 30, 2012 asking s.22 to follow up to see if the tenants locker had been broken into again or if the had just not replaced the lock.

Based on these emails and the balance of probabilities I find it is likely the landlord's agent left a message for the tenant about the break-in despite the tenant's assertion that she was never informed by the landlord about the break-in.

There is no evidence before me that the tenants were unhappy or had indicated to the landlord that they were concerned about the security of the storage locker room prior to the break-ins identified in the above noted correspondence.

With no other evidence break-ins in the storage lockers had been a previous problem I find the tenant has provided no evidence to establish the landlord was in breach or violation of the *Act*, regulation or tenancy agreement.

As such, I find the tenant has failed to establish the landlord should be held responsible for the cost of possessions stolen from the storage locker; for the deductible should the tenant obtain relieve from her insurance company; or for the costs of removing remaining items from their storage locker.

While I accept that the storage locker and vehicle break-ins are of great concern to the tenant I find the tenant's failure to provide any evidence that she had raised these issues to the landlord prior to September 10, 2012 after failing to pay rent; that she has failed to assist the landlord by providing access codes that she says she has obtained so the landlord can deactivate them; and that the landlord has been taking reasonable steps to improve security do not demonstrate the landlord has failed to ensure the tenant has quiet enjoyment regarding security issues.

In relation to the tenant's concerns about pets in the building, I find the tenancy agreement and newsletters submitted into evidence specifically indicate that there are

pets allowed in the building and the tenant cannot rely on the presence of pets in the building as a breach of the landlord's obligation to ensure quiet enjoyment.

In relation to the issue of the tenant's neighbour smoking on his balcony, despite the notifications in the newsletter that local bylaws prohibit smoking on balconies and in light of the landlord's testimony that there are no such bylaws I find the tenant, who has the burden to prove her claim, has failed to provide any evidence to confirm that there are such bylaws. In addition, the tenant has not provided a copy of the strata bylaws to confirm whether or not there is a strata bylaws prohibiting smoking.

While I acknowledge the tenancy agreement signed by the parties prohibits this tenant from smoking on her balcony, I find that since, by the landlord's testimony, the neighbouring tenant does not have such a clause the landlord must balance the rights and obligations of both tenants.

As one tenant does not have a restriction from smoking on his balcony I find at best the landlord can develop a protocol between the parties and the landlord has no ability to stop the neighbouring tenant from smoking without infringing on her obligations to that tenant. In the case before me, I find this matter is not a sufficient justification, on its own, to warrant any obligation on the part of the landlord to pay the tenant's moving costs.

Conclusion

For the reasons noted above, I dismiss the tenant's Application 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: October 25, 2012.

Residential Tenancy Branch

# Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

## DECISION

Dispute Codes CNC, FF

Introduction

This hearing dealt with the tenant's Application for Dispute Resolution seeking to cancel a notice to end tenancy. The hearing was conducted via teleconference and was attended by the tenant and an agent for the landlord.

During the hearing, the parties agreed the landlord would obtain an order of possession should the tenant be unsuccessful in his Application. The parties also mutually agreed to amend the effective date of the 1 Month Notice to End Tenancy to November 30, 2012, should the tenant be unsuccessful in his Application.

Issue(s) to be Decided

The issues to be decided are whether the tenant is entitled to cancel a 1 Month Notice to End Tenancy for Cause and to recover the filing fee from the landlord for the cost of the Application for Dispute Resolution, pursuant to Sections 47, 67, and 72 of the *Residential Tenancy Act (Act).*

Background and Evidence

The landlord submitted a copy of a tenancy agreement signed by the parties on September 22, 2009 for a month to month tenancy beginning on October 1, 2009 with a monthly rent of $755.00 due on the 1st of each month with a security deposit of $387.50 paid. The tenancy agreement stipulates: "It is understood and agreed that there will be no smoking in the premises."

Both parties have provided a copy of a 1 Month Notice to End Tenancy for Cause issued on August 27, 2012 with an effective vacancy date of September 30, 2012 citing the tenant has breached a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.

The landlord has submitted into evidence letters dated March 5, 2012; June 23, 2011; December 14, 2010 and July 12, 2012 all advising the tenant that he must not smoke in the rental unit and that failure to comply will result in the landlord ending the tenancy.

The tenant has submitted a notice that he stipulates is posted in the building that states:

"Smoke Free Building:
Please be advised that the Lexington is a smoke free building.

Smoking is prohibited in all common areas of the building as well as within the suites. Common areas include but are not limited to the hallways, the laundry room, the parkade, the building entrance/lobby, storage areas, the stairwells and elevator.

Any persons smoking on the balconies are asked to ensure that all cigarette butts are disposed of in a proper receptacle and not thrown over the railings onto patios below.

Thank you for your immediate cooperation.

Dennison Property Management Ltd."

The landlord's agent testified this notice is quite old and originally in recognition of the "grand parented smokers" in the residential property when the building was converting to non-smoking. While the notice does ask people who smoke on balconies to use a proper receptacle it does not state that anyone can smoke in the building, in fact is specifically notes that people are not allowed to smoke.

The tenant testified that at the time he entered into the tenancy agreement he did not smoke but started to smoke about 6 months after moving in. He submits that he never smokes inside the rental unit but only on the balcony and that he stores his cigarette butts in a container near the bathroom door.

The landlord testified that when they have inspected the rental unit the tenant has full ashtrays in the unit and that the hallway and the unit smell of cigarette smoke. The tenant suggests that the smell is caused by the butts and not by lit cigarettes.

The landlord testified that he has responded only to one of the 4 warning letters submitted indicating that it was an oven mitt that was smoldering. The landlord pointed out that the tenant had not submitted any such letter into evidence.

Analysis

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

a) The tenant
   i. Has failed to comply with a material term, and
   ii. Has not corrected the situation within a reasonable time after the landlord gives written notice to do so.

Residential Tenancy Policy Guideline 8 states that a material term is a term that is so important that the most trivial breach of that term gives the other party the right to end the tenancy. To determine materiality of the term the guideline states I must focus on the importance of the term in the overall scheme of the tenancy agreement.

As the impact of smoking in a rental unit can affect other tenancies and as the landlord has deemed this property to be smoke free the landlord have obligations to the other tenants in the residential property to ensure they all enjoy a smoke free building. As such, I find the term requiring no smoking is material to this tenancy.

I accept the landlord's position that the building is a smoke free building and that this is clearly outlined in the tenancy agreement as well as the "Smoke Free" notice the tenant submitted into evidence. Based on the testimony of both parties I accept that the "Smoke Free" notice had been posted prior to the start of this tenancy. I also accept that it was intended to accommodate "grand parented smokers".

While this "Smoke Free" notice is unclear as to whether or not it relates to people will break the smoke free rules or to any smokers, I find the tenancy agreement the parties signed September 2009 is very clear: "It is understood and agreed that there will be no smoking in the premises."

Black's Law Dictionary 7th edition defines premises as a house or building, along with its grounds. As such and despite the tenant's testimony that he only smoked on the balcony, in part, because he did not consider the balcony as part of the rental unit, I find smoking on the balcony constitutes smoking on the premises, and the tenant has breached a material term of the tenancy agreement.

I also find the landlord has provided the tenant with more than adequate time to correct the breach and he has failed to do so. As such, I find the 1 Month Notice to End Tenancy for Cause issued by the landlord on August 27, 2012 is valid and enforceable.

Conclusion

I find the landlord is entitled to an order of possession effective **November 30, 2012 after service on the tenant**. This order must be served on the tenant. If the tenant fails to comply with this order the landlord may file the order with the Supreme Court of British Columbia and be enforced as an order of that Court.

As the tenant was unsuccessful in his Application to cancel the notice, I dismiss his claim to recover the filing fee.

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: October 05, 2012.

Residential Tenancy Branch

# Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

## DECISION

Dispute Codes OLC, MNDC

Introduction

This hearing dealt with the tenant's application for dispute resolution under the Residential Tenancy Act (the "Act") seeking a monetary order for money owed or compensation for damage or loss and for an order requiring the landlord to comply with the Act.

The parties appeared, the hearing process was explained and they were given an opportunity to ask questions about the hearing process.

Thereafter all parties gave affirmed testimony, were provided the opportunity to present their evidence orally and to refer to relevant documentary evidence submitted prior to the hearing, and make submissions to me.

At the outset of the hearing, each party confirmed that they had received the other party's evidence. Neither party raised any issues regarding service of the application or the evidence. I have reviewed all testimony and other evidence. However, only the evidence relevant to the issues and findings in this matter are described in this decision.

Issue(s) to be Decided

Is the tenant entitled to a monetary order?

Has the tenant established an entitlement to an order requiring the landlord to comply with the Act?

Background and Evidence

This tenancy began on July 1, 2011, current monthly rent is $834.00 and the tenant paid a security deposit of $400.00 on or about June 15, 2011.

The tenant's monetary claim is in the amount of $375.00, for a loss of his quiet enjoyment. Upon questioning, the tenant stated that he arrived at this amount due to three months, May, June and July, where he suffered a loss of quiet enjoyment, at $125.00 per month.

The tenant said despite his complaints about the second hand smoke coming from the rental unit below him, the landlord failed to adequately address the problem and that he continued to suffer the effects of the smoke until September 4, 2012, when the landlord properly sealed the pipes and walls in the two rental units. The tenant agreed that the problem has now been corrected.

Into evidence, the tenant submitted a spread sheet, entitled "Smoking Infiltration log," showing periods when the tenant noticed the smoking and the severity of the presence of smoke, from light to heavy. I note that the first date mentioned was April 30, 2012 until August 2, 2012. The tenant also submitted witness letters and a letter to the landlord requesting proper sealing to keep out the second hand smoke. The letter is dated April 5, 2012, but the tenant said this was an incorrect date and that the date actually was August 5, 2012.

In response, the landlord said that each time they received a letter from the tenant, the problem was addressed with the tenants in the other rental unit. The landlord referred to their evidence, which showed that upon receipt of a letter from the tenant, the response was notated.

The landlord submitted that they believed the problem had been corrected, due to the tenant's statement on a May 20, 2012 letter, stating that the other tenant had seemed to stop smoking.

The landlord said that it was not until they received the tenant's application for dispute resolution that they were made aware that the tenant still had complaints about the second hand smoke. At this time, they contacted a contractor to provide the proper sealing.

In response, the tenant said that after the May 20 letter, he provided no further letters as he was tired of writing letters.

Analysis

In a claim for damage or loss under the Act or tenancy agreement, the claiming party, the tenant in this case, has to prove, with a balance of probabilities, four different elements:

**First**, proof that the damage or loss exists, **second**, that the damage or loss occurred due to the actions or neglect of the respondent in violation of the Act or agreement, **third**, verification of the actual loss or damage claimed and **fourth**, proof that the party took reasonable measures to mitigate their loss.

Where the claiming party has not met each of the four elements, the burden of proof has not been met and the claim fails.

The tenant alleges that the landlord intentionally failed to satisfactorily address the issue of the second hand smoke coming from another rental unit, causing a loss of his quiet enjoyment for May, June and July 2012.

In the circumstances before me I am not persuaded that the landlord was negligent and I find that the landlord took reasonable steps to address the second hand smoke issue raised by the tenant. In reaching the conclusion, I found the landlord's notations of each action taken on the tenant's earlier letters and the tenant's May 20, 2012 letter showing that he was satisfied that the other tenants had stopped smoking to be compelling and persuasive.

I also relied on the tenant's failure to submit evidence that he issued written or oral notification to the landlord regarding a continuing problem with second hand smoke.

Without such proof, I cannot conclude that the landlord knew that the problem had not been corrected.

Conclusion

As I find the tenant submitted insufficient evidence to support his claim that the landlord was negligent due to the above reasons, I dismiss the tenant's application for a monetary award, without leave to reapply.

As the tenant acknowledged that the rental units have now been properly sealed, I also dismiss his request for an order requiring the landlord to comply with 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: September 17, 2012.

Residential Tenancy Branch