



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

**Dispute Code:** ET

### **Introduction:**

This is the Landlord's application for an early end to the tenancy and an Order of Possession.

The Landlord and her witnesses gave affirmed testimony at the Hearing.

The Landlord testified that she posted the Notice of Hearing documents to the Tenant's door on February 1, 2013, with a witness present. She stated that she knocked on the door, but no one answered and that later on she saw a guest of the Tenant's remove the documents and bring them inside the rental unit.

The Landlord's witness BP testified that he saw the Landlord post the documents to the Tenant's door but he was not sure if it was January 31, 2013 or February 1, 2013. Based on the affirmed testimony I am satisfied that the Tenant was duly served with the Notice of Hearing. Despite being served with the documents, the Tenant did not sign into the teleconference and the Hearing continued in his absence.

### **Issue to be Determined:**

Has the Landlord show that there is cause to end this tenancy and that it would be unreasonable or unfair to wait for a one month Notice to End Tenancy under the *Act* to take effect?

### **Background and Evidence:**

The rental unit is a suite in the Landlord's house. The Landlord testified that she believes the Tenant is dealing drugs from the rental unit. She believes this to be true for the following reasons:

- She can smell marijuana coming up through the vents, at all times of the day and night.

- Many people (so many that she cannot count them all) visit the Tenant and leave after a few minutes. She has had people knock on her door at 11:00 p.m. asking for the Tenant. One night a strange man, who appeared to be under the influence of drugs, knocked on her door which frightened her.
- On January 19, 2013, the Landlord was in the Tenant's suite with BP fixing a tap and discovered a substance on the sink, which BP thought was hash oil.
- On January 19, 2013, the Landlord checked an on-line Provincial Court web-site and discovered that the Tenant has an alias and that he has over 2 pages of convictions, including: Breach of Probation; Possession of a controlled substance; Trafficking in a controlled substance; Breach of an undertaking; Escape from lawful custody; Theft; and dangerous and impaired driving offences.
- On January 22, 2013, the Tenant fell into an altercation with some of his guests on the rental property. Police were called and confiscated a machete.
- On January 25, 2013, a smell of marijuana came up the vents
- On January 26, 2013, there were more loud arguments, loud music and the smell of marijuana.
- On January 27, 2013, a smell of marijuana came up the vents at 9:00 a.m. in the morning. The same thing happened on January 28, 2012.
- During this period of time, the Tenant had a guest who stayed for 3 or 4 nights. The Landlord and her witness MB overheard their loud conversations through the vents, which included talk about crime and drugs including that the Tenant's guest was a meth addict.
- On February 1, 2013, there were 5 strangers knocking at the Tenant's door within a space of 2 hours. They only stayed minutes and then were gone.

The Landlord's witness MB is her neighbour and is the nanny for the Landlord's children. She testified that there is a constant flow of people and vehicles coming to the rental unit, staying for a few minutes and then leaving. She stated that she called 911 approximately two weeks ago because of loud yelling. The witness testified that the police found a machete in the rental unit. The witness stated that she smelled drugs coming through the vents when she took care of the Landlord's children at night. Because of this she now has the Landlord's children stay with her when the Landlord is working. The witness stated that she had observed the Tenant doing what appeared to be drug deals in the alley and across the street, but that they appear to have moved it inside because they saw her watching them. When asked why she thought they were drug deals, she said because it was in the alley; the Tenant met the people and would talk, smoke and then leave moments later, with the Tenant heading back to the rental unit and the others going in other directions.

**Analysis:**

In making an application for an early end to this tenancy the Landlord has the burden of proving, **on the balance of probability**, that there is cause for ending the tenancy, such as unreasonably disturbing other occupants, seriously jeopardizing the health and safety or lawful right or interest of the Landlord and placing the Landlord's property at significant risk, and by proving that it would be unreasonable or unfair to the Landlord or other occupants to wait for a one month Notice to End Tenancy for cause under Section 47 of the *Act* to take effect.

Taken in its totality, and based on the **undisputed** affirmed testimony of the Landlord, I am satisfied that the Landlord has provided sufficient evidence on the balance of probability that there is cause to end the tenancy and that it would be unreasonable or unfair to the Landlord to wait for a one month Notice to End Tenancy for cause to take effect. I find that the Tenant has unreasonably disturbed the Landlord and her children and that he has seriously jeopardized the health and safety of the Landlord and her children.

I hereby provide the Landlord with an Order of Possession effective **2 days after service of the Order upon the Tenant**.

**Conclusion:**

I hereby provide the Landlord with an Order of Possession **effective two days from service of the Order upon the Tenant**. This Order must be served on the Tenant 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: February 07, 2013

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Residential Tenancy Branch



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

### Dispute Codes

For the tenant: CNC, MNDC, FF  
For the landlord: OPC, MNSD, FF

### Introduction

This hearing was convened as a result of the cross applications of the parties for dispute resolution under the Residential Tenancy Act (the "Act").

The tenant applied for an order cancelling a 1 Month Notice to End Tenancy for Cause (the "Notice"), a monetary order for money owed or compensation for damage or loss, and for recovery of the filing fee.

The landlords applied for an order of possession for the rental unit due to alleged cause, for authority to retain the tenant's security deposit, and for recovery of the filing fee.

The hearing process was explained to the parties and an opportunity was given to ask questions about the hearing process. Thereafter the parties were provided the opportunity to present their evidence orally, refer to 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 applications or the evidence.

I have reviewed all evidence and testimony before me that met the requirements of the Residential Tenancy Branch Rules of Procedure (Rules); however, I refer to only the relevant evidence regarding the facts and issues in this decision.

### Issue(s) to be Decided

1. Is the tenant entitled to an order cancelling the 1 Month Notice to End Tenancy for Cause, to a monetary order, and to recover the filing fee?
2. Are the landlords entitled to an order of possession for the rental unit based upon the Notice, for authority to retain the tenant's security deposit, and to recover the filing fee?

### Background and Evidence

The undisputed evidence shows that this tenancy started on October 1, 2012, that monthly rent is \$1300.00 and that the security deposit paid by the tenant was \$575.00.

The rental unit is on the lower level and the landlord has another tenant on the upper level of a home.

Pursuant to the Residential Tenancy Branch Rules of Procedure, the landlords proceeded first in the hearing to explain and support the Notice.

The landlord said that the tenant was served a 1 Month Notice to End Tenancy for Cause on February 21, 2013, by posting it on the tenant's door. The Notice listed an effective end of the tenancy date of March 21, 2013.

A notice to end the tenancy is not effective earlier than one month after the date the tenant receives the notice and the day before the day in the month that rent is payable under the tenancy agreement. In other words, one clear calendar month before the next rent payment is due is required in giving notice to end the tenancy. Section 53 of the Act allows the effective date of a Notice to be changed to the earliest date upon which the Notice complies with the Act; therefore, I find that the Notice effective date is changed to March 31, 2013.

The causes as stated on the Notice alleged that the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord, put the landlord's property at significant risk, and breached a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.

In support of their Notice, the landlord testified as follows:

*Cause #1-The tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord;*

The causes listed are all related to the landlord's allegation that the tenant or occupant is smoking cigarettes and marijuana in the rental unit, causing significant interference to the upper tenant.

The landlord said that on October 24, 2012, the upper tenant contacted the landlord and informed him that someone was smoking in the lower unit. The landlord also submitted that the upper tenant has contacted him numerous other times about the smell of cigarette and marijuana in her rental unit coming from the lower suite through the common ventilation system.

The landlord said that on October 27, 2012, when he arrived at the rental home to do yard work, he noticed the smell of marijuana outside.

The upper tenant also informed the landlord that she believed that the tenant was growing marijuana in her rental unit, due to the scent of fresh marijuana and moisture on the windows. The landlord said he attended the rental unit to inspect, but found no evidence of a "grow-op."

The landlord submitted that the police attended the rental unit on an unrelated matter to speak with the tenant, and that after contacting the police later on, the landlord was informed that marijuana was present in the lower rental unit. The landlord, however, said that the police would not issue a written report confirming their statement.

The landlord also stated that when landlord SD attended the upper rental unit on February 20, 2013, she noticed the smell of marijuana, leading to issuance of the Notice.

The landlord said that the upper and lower tenants share a common ventilation system, which would create the interference to the upper tenant.

*Cause #2- The tenant has put the landlord's property at significant risk –*

When questioned, the landlord said that there was not a significant risk to the property.

*Cause #3-The tenant has breached a material term of the tenancy agreement-*

The landlord contended that the tenant breached the addendum to the tenancy agreement, which states that there is to be no smoking inside the suite. The landlord said he posted a letter to the tenant about her smoking inside the suite, constituting written warning.

*Tenant's response-*

The tenant denied smoking inside the rental unit, but does smoke outside of her home. The tenant also denied smoking marijuana at all, either in or outside the rental unit.

The tenant submitted that she likewise has smelled marijuana when she is outside and that she does not open the back windows due to the smell of marijuana coming into her suite.

The tenant also said that the landlord has entered her rental unit at least 8 times since the tenancy began and has never smelled smoke or observed evidence of cigarettes or paraphernalia.

The tenant also countered that the police called her from the rental unit when she was not home and had not been home for hours, to talk to her son about a bonfire elsewhere in the community. The tenant said she immediately returned home, had the police come inside the rental unit, and there was no evidence of cigarettes or marijuana.

The tenant also contended that she was issued the Notice as the landlords have listed the house for sale.

*Landlords' witness-*

The witness, the upper tenant, submitted that the tenant has been smoking cigarettes and marijuana in the rental unit since the tenancy began, causing her to complain to the landlord numerous times.

The witness said that the shared ventilation system allowed any of the smoke to enter her upper suite, with the only relief coming when she closes her vents.

The witness said she smelled fresh marijuana in the lower suite, and that her use and enjoyment of her rental unit has been compromised, particularly for her children.

*Tenant's application-*

In addition to seeking an order cancelling the Notice, the tenant is also requesting a monetary order in the amount of \$200.00.

When questioned, the tenant said this amount included the filing fee and other incidental expenses, such as postage.

*Relevant evidence-*

The landlord's relevant evidence included the tenancy agreement, a copy of the Notice, copies of text messages between the parties, text messages from the upper tenant, a breach letter to the tenant, and written statements from two previous tenants who lived in the rental unit below the witness.

The tenant's relevant evidence included a written statement from the tenant.

Analysis

Based on the relevant oral and written evidence, and on a balance of probabilities, I find as follows:

*Tenant's application-*

The landlords have the burden of proving on the balance of probabilities that there were sufficient grounds to end this tenancy for the stated causes.

In the case before me, I find the landlords submitted insufficient evidence to demonstrate that the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord, put the landlord's property at significant risk, and

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

In reaching this conclusion, I was persuaded by the lack of direct evidence from the landlord substantiating that the tenant or occupant smoked either cigarettes or marijuana inside the rental unit. The evidence centered around complaints from another tenant.

The upper tenant said that the tenant or her son smoked in the rental unit and the tenant denied that this was the case.

The landlord, who attended and was in the rental unit at 10 times, according to the landlord's testimony, did not detect the odour of cigarette or marijuana smoke or evidence that smoking had occurred inside the rental unit.

The police were never called to the rental unit by either the landlord or the upper tenant with regard to marijuana smoking taking place in the lower rental unit.

I am not persuaded that the landlord receiving complaints from other tenants is a ground for ending the tenancy

The landlord admitted that any alleged conduct of the tenant was not a significant risk.

Due to the above, I therefore find that the landlord has submitted insufficient evidence to prove the causes listed on the Notice.

As a result, I find the landlords' 1 Month Notice to End Tenancy for Cause, dated and issued February 21, 2013, listing an effective move out date of March 21, 2013, is not valid and not supported by the evidence, and therefore has no force and effect. I order that the Notice be cancelled, with the effect that the tenancy will continue until ended in accordance with the *Act*.

As to the tenant's request for a monetary order for \$200.00, the tenant failed to submit proof of incurring a cost for any amount other than a filing fee.

I therefore grant the tenant recovery of her filing fee of \$50.00, due to her successful application, and authorize her to redeem this amount by deducting \$50.00 from her next or a future month's rent payment.

Should the tenancy end prior to the tenant being able to make such deduction of \$50.00, the tenant is granted a final, legally binding monetary order pursuant to section 67 of the *Act* in the amount of \$50.00, which I have enclosed with the tenant's Decision.

*Landlords' application-*

As I have granted the tenant's application and cancelled the Notice, I dismiss the landlords' application for an order of possession for the rental unit. As I have dismissed the landlord's application, I also dismiss their request to recover the filing fee.

I note that the landlord asked to retain the tenant's security deposit; however I informed the landlord that this issue is a matter to be dealt with at the end of the tenancy in accordance with the Act, and therefore dismiss their request to retain the tenant's security deposit, with leave to reapply.

Conclusion

The tenant's application is granted and the Notice is cancelled.

The tenant is granted authority to deduct \$50.00 from her next or a future month's payment of rent. In the alternative the tenant is granted a monetary order for \$50.00.

The landlords' application is dismissed.

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 21, 2013

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Residential Tenancy Branch

## DECISION

Dispute Codes      OLC FF

### Introduction

This hearing dealt with the tenant's Application for Dispute Resolution under the *Residential Tenancy Act* (the "Act") for an order directing the landlord to comply with the Act, regulation or tenancy agreement, and to recover the filing fee.

The tenant and the landlord attended the teleconference hearing and gave affirmed testimony. During the hearing the parties were 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 hearing.

The parties confirmed that they received the evidence from the other party prior to the hearing and had the opportunity to review the evidence.

### Issue to be Decided

- Should the landlord be ordered to comply with the Act, regulation or tenancy agreement?

### Background and Evidence

A month to month tenancy began on May 1, 2010. Monthly rent in the amount of \$725.00 is due on the first day of each month. The rental unit is currently one of three rental units in the building, and in the coming months, may include a fourth rental unit.

According to the tenancy agreement addendum #16 (i) states that "No smoking is allowed in the building." The landlord testified that the tenant was advised that smoking was permitted outside including on the balconies of the rental unit. The tenant stated that he does not recall being advised of that.

The landlord advised that two of the three tenants in the building are non-smokers, while the third is a smoker; however due to her daughter suffering from asthma and the tenancy agreement rules, only smokes outside and on the balcony.

The tenant is seeking an order directing the landlord to enforce that there is not smoking on the balconies or within three metres of the building as the second hand smoke is impacting this quiet enjoyment of the rental unit.

The tenant confirmed that he did not submit a copy of any bylaws to support that smoking was not permitted outside of the building. The tenant referred to a letter from his wife submitted in evidence that claims his children smell like smoke after leaving the rental unit. The tenant claims that the person living above him smokes inside the rental unit and that he can smell and is impacted by their smoking.

The landlord disputes that the tenants living above the applicant tenant deny smoking in their rental unit, have not been found to be smoking in their rental unit after random visits by the landlord to check for smoking, and submitted a letter in evidence stating that they deny smoking inside the rental unit as their daughter suffers from asthma.

The landlord testified that in she estimates that within the next three months, the HVAC system will be changed from the current forced air heating system to an isolated system that will prevent shared air between the tenant and the other tenants.

### Analysis

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

The tenant alleges that second hand smoke is entering his rental unit. The tenant provided a letter from his wife as evidence that his children smell like smoke after leaving his rental unit. The landlord disputes the tenant's testimony that tenants are smoking inside their rental units. The landlord submitted a letter from the tenant living above the applicant tenant who writes that she does not smoke inside the rental unit and that her daughter suffers from asthma so she has never smoked in any home they have lived in.

The landlord testified that she has attended the rental units on a random basis and has not found any smoke inside the rental units. The landlord stated that she allows smoking outside the building and on the balconies, however, indicated that the tenant was reminded of this before he moved into the rental unit. The tenant does not recall being advised of that.

Where one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof has not met the onus to prove their claim and the claim fails.

In this matter, the burden of proof is on the tenant to prove the landlord has breached the *Act*, regulation or tenancy agreement. I find the tenant has failed to prove the landlord has breached the *Act*, regulation or tenancy agreement. As a result, **I dismiss** the tenant's request in full due to insufficient evidence, without leave to reapply.

As the tenant was not successful with their application, I do not grant the recovery of the filing fee.

### Conclusion

I dismiss the tenant's application in full due to insufficient evidence, without leave to reapply.

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: January 10, 2013



# Dispute Resolution Services

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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.

The hearing was conducted via teleconference and was attended by the tenant and the landlord's agent.

At the outset of the hearing the parties agreed that while the landlord did not provide an indication on the 1 Month Notice to End Tenancy for Cause as to what the cause was that they would like me to adjudicate whether the Notice would be valid based on the cause the landlord had intended to cite. The landlord testified that the cause was 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.

During the hearing, the landlord did not verbally request an order of possession should the tenant be unsuccessful in her Application.

During the hearing the landlord's agent displayed open hostility towards both the tenant and myself and at one point declared that he was not going to cooperate with the process because he was right. I advised the agent to leave the hearing and he did so.

### 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, pursuant to Section 47 of the *Residential Tenancy Act (Act)*.

### Background and Evidence

The landlord submitted the following documentary evidence:

- A copy of a residential tenancy agreement which was signed by the parties on July 1, 1997 for a month to month tenancy beginning on July 1, 1997 for the monthly rent of \$858.00 due on the 1<sup>st</sup> of each month and a security deposit of \$100.00 was paid;

- A copy of a 1 Month Notice to End Tenancy for Cause that was issued on January 10, 2013 with an effective vacancy date of February 28, 2013 with no reasons cited by the landlord on the Notice; and
- A copy of a letter dated January 10, 2013 from the landlord to the tenant indicating that the landlord was issuing a "Notice to End" because of an ongoing complaint in a common area that is upsetting the tenant above this tenant.

The landlord testified that he had received a complaint from another tenant that this tenant has been smoking on her balcony which bothers this other tenant and impacts her health due to existing medical conditions. The landlord testified that the *Act* requires that when he gets a complaint from a tenant he must act upon it or be held responsible for the complainant's loss of quiet enjoyment.

The landlord acknowledges that the tenancy agreement does not prohibit smoking but that about a year and a half ago the landlord implemented no smoking rules for all common areas, including balconies, in all of their buildings. He also submits that all tenants were advised of this change and that the tenant has been provided several written warnings about this issue. The landlord submits that the balcony is deemed common area because it is on the outside of the building.

Section 23 entitled "Common Areas" of the tenancy agreement states:

"The Tenant shall take all reasonable steps to ensure that any Resident shall not abuse the common areas of the Property but shall use them prudently, safely and equitably; and shall conform to all notices, rules or regulations posted on or about the Property concerning the use of any laundry room, recreation room and facilities, parking areas, or storage areas and including restriction of use to Residents only, and restrictions on use by children. All such use shall be at the risk of the Residents."

The landlord provided no documentary evidence including copies of any written notices to the tenant; documents or evidence that the landlord changed their policy regarding smoking in common areas; written complaints regarding this issue from other tenants; the landlord would not even identify the complainant in the hearing.

### Analysis

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.

While I agree with the landlord's position that he has a responsibility under Section 28 to ensure that all tenants receive quiet enjoyment including freedom from unreasonable disturbance, I find the landlord has failed to establish that any tenant lodged a complaint.

Even if a complaint was lodged, I find the landlord has failed to provide any evidence that this tenant's smoking on her balcony has caused unreasonable disturbance. It is not sufficient to state that "smoking bothered" another occupant or that the other occupant had health problems that were exacerbated by this tenant's smoking without any confirmation of any existing health problems.

Further, I find the tenancy agreement does not restrict this tenant from smoking anywhere in the rental unit, including the balcony. As Section 23 of the tenancy agreement defines that common areas are any laundry room, recreation room and facilities, parking areas, or storage areas I find the landlord has not established that balconies are common areas.

And finally, as I am not persuaded by the landlord's agent's position that the balconies should be considered common area and because Section 28 of the *Act* also conveys upon a tenant the right of exclusive possession of the rental unit I find the landlord cannot impose a rule subject to common areas on the tenant's balcony as she was granted exclusive possession of the unit, including balcony, when the tenancy began.

For these reasons, I find the tenant is allowed to smoke in her rental unit, including her balcony and this cannot be used as cause to end the tenancy.

### Conclusion

Based on the above, I cancel the 1 Month Notice to End Tenancy issued on January 10, 2013 and find the tenancy remains in full force and effect.

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 12, 2013

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Residential Tenancy Branch



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding Bakonyi Holdings  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes: MNDC, OLC, FF

### Introduction

This hearing concerns the tenant's application for a monetary order as compensation for damage or loss under the Act, Regulation or tenancy agreement / an order instructing the landlord to comply with the Act, Regulation or tenancy agreement / and recovery of the filing fee. Both parties attended and gave affirmed testimony.

### Issue(s) to be Decided

Whether the tenant is entitled to any of the above under the Act, Regulation or tenancy agreement.

### Background and Evidence

There is no written tenancy agreement in evidence for this tenancy which began in May 2002. Monthly rent is \$595.00 and a security deposit of \$267.50 was collected.

In his application the tenant describes the landlord's "overnight smoking" as a disturbance "ever since I've lived here and, in particular, the past month."

The landlord testified that the building within which the tenant's unit is located, is a 3 storey structure with a penthouse. Further, he testified that it is his wife about whom the tenant is complaining. The landlord stated that the tenant's unit is located on the ground floor, and that he and his wife live in a unit located on the next level up, although not immediately above the tenant's unit. The landlord also testified that with the exception of common areas where smoking is prohibited, residents are permitted to smoke in their own units and on their balconies and patios. As well, he testified that he and his wife have resided in this building for approximately 16 years, and that while his wife does not smoke within their unit, she does smoke on their patio. The landlord referred to the provincial *Tobacco Control Act*, and undertook to make the point that the

legislation prohibiting smoking does not apply to smoking in individual units, or balconies in apartments or condominiums.

Finally, the landlord testified that, given the physical / spatial distance between his patio and the tenant's unit, he knows of no way in which smoke from his patio could make its way to the tenant's unit, and he considers that the tenant's complaint is a reflection of the tenant's aggravation with a recent rent increase.

### Analysis

The full text of the Act, Regulation, Residential Tenancy Policy Guidelines, Fact Sheets, forms and more can be accessed via the website: [www.rto.gov.bc.ca](http://www.rto.gov.bc.ca)

Section 28 of the Act speaks to **Protection of tenant's right to quiet enjoyment**, and provides in part as follows:

28 A tenant is entitled to quiet enjoyment including, but not limited to, rights to the following:

(b) freedom from unreasonable disturbance;

(d) use of common areas for reasonable and lawful purposes, free from significant interference.

I note that the landlord and his wife have resided in the building for approximately 5 years in excess of the tenant's nearly 11 year term of tenancy. Further, I note that while the tenant claims that the landlord's smoking has been problematic since the start of tenancy, his smoking related concerns appear to have come to the fore only very recently. Additionally, I note that the tenant has not alleged that smoking has taken place in any of the building's common areas where smoking is prohibited.

In summary, based on the documentary evidence and testimony, I find there is insufficient evidence that the landlord's smoking has breached the tenant's right to quiet enjoyment. Accordingly, the tenant's application is dismissed.

### Conclusion

The tenant's application is hereby 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 12, 2013

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Residential Tenancy Branch



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding LADYSMITH SENIOR CITIZENS HOUSING SOCIETY  
and [tenant name suppressed to protect privacy]

## DECISION

Dispute Codes      ERP, O

### Introduction

This hearing was scheduled to deal with a tenant's application for Orders to compel the landlord to address infiltration of cigarette smoke or marijuana smoke into her rental unit. Both parties appeared or were represented at 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

Is it necessary and appropriate to issue orders to the landlord?

### Background and Evidence

The tenancy in this rental unit commenced April 15, 2012. The landlord provides residential housing to low-income seniors. The residential property in which the tenant resides is a two-level four-plex with two units located on the ground level and two upper units. The tenant resides in an upper unit (#13).

The tenant submitted that shortly after her tenancy commenced she noticed smoke infiltrating her rental unit. The smoke makes her feel ill, her possessions smell, and to make it tolerable she opens her windows to air the unit out, even in winter months. The smoke in the tenant's unit is most concentrated in her bathroom and was smelled as recently as the night before the hearing. The tenant suspects the smoke comes from the unit directly below her (#11) as her neighbour in unit #12 does not smoke and unit #10 has been unoccupied for a few months.

The tenant submitted that the infiltration of smoke occurs nightly and becomes noticeable in her unit starting at about 8:00 p.m. and is at its worst at about 10:00 p.m. The tenant has observed that nearly every evening the tenant in #11 has a guests

arrive, usually a woman with a black/blue truck, or a man, and after the arrival of the guests is when the smoke infiltration begins.

The tenant submitted that she notified the landlord of the issue, the first time being in May 2012, but the landlord has not taken any action to remedy the situation.

The landlord acknowledged that he recalled two conversations with the tenant whereby she was complaining of smoke in her unit. The landlord stated that the rental units are sealed units, meaning they do not have central heating or air flow between units. The landlord does not believe smoke could pass from one unit to another when windows and doors are closed. The landlord also stated that he spoke with the tenant in #11 and she denied smoking in the unit. The landlord took the position there was nothing more he could do. The landlord viewed the tenant's numerous complaints about various issues in this unit and a former unit to be a nuisance and he was not prepared to attend the property to investigate the tenant's complaints further.

The landlord also submitted that in preparing for this proceeding the caretaker of the former tenant of #13 was contacted. She wrote a statement indicating that during the time she was a caretaker of the former tenant she did not notice smoke in the rental unit.

The landlord explained that the landlord is in the process of making the building smoke free; however, certain tenants are not subject to smoking prohibitions as their tenancies began before the smoke free terms were brought in. The tenant in unit #11 is one of the tenants not precluded from smoking in their unit under their terms of tenancy. However, the landlord understands that the tenant in unit #11 no longer smokes.

The tenant of #11 was called to testify. She confirmed that she was a smoker up until a few months ago. The witness testified that her boyfriend visits her nightly but that he has not smoked in 15 years. Other than her daughters that visit her during the day, she does not have any other female guests that visit in the evening. The witness testified that no person has smoked tobacco or any other substance in her unit for the past few months. The witness was agreeable to permitting the landlord to enter her unit upon request if the landlord receives another complaint of smoke in unit #13.

Upon discussion of possible remedies to this dispute, the parties were agreeable to taking the following steps:

1. If the tenant detects smoke in her unit again she is to call the landlord on his cell phone, up to 9:30 p.m. and request his attendance at the rental unit.

2. Upon receiving a phone call from the tenant, the landlord will make every reasonable effort to attend the rental unit in a timely manner, and bring a non-biased, non-smoking third party, as a witness.
3. Taking in to account the landlord and/or a witness may not be available on short notice, the tenant shall provide the landlord up to three occasions to fulfill the obligation under step no. 2.
4. If the landlord and/or the witness detects smoke in the tenant's unit the landlord shall request permission of tenant #11 to enter her unit for purposes of determining whether there is evidence of smoke in that unit.

### Analysis

Under the Act, a tenant is entitled to quiet enjoyment of their rental unit, including freedom from unreasonable disturbance or significant interference. A tenant is also entitled to live in a rental unit and residential property that complies with health, safety and building laws; and, is suitable for occupation, given the age, character and location of the property.

Where a tenant notifies a landlord that they are experiencing loss of quiet enjoyment due to actions of another tenant or another tenant's guests, or that repairs are needed to make the rental unit suitable for occupation it is expected that the landlord will take sufficient action to responding or investigate such complaints. Failure to take reasonable action or to sit idly by while another tenant's actions cause the tenant to suffer a loss of quiet enjoyment may be a basis to find a breach of the Act by the landlord.

In this case, it was undisputed that the tenant complained to the landlord that she was experiencing smoke infiltration in her unit on more than one occasion. According to the landlord the action he took was to enquire with the tenant in the unit #11. Upon the tenant in #11 denying that anybody was smoking in her unit the landlord took no further action. I find the landlord's decision not to investigate the tenant's complaints further and refusal to attend the property to deal with the tenant's complaints to be unreasonable in the circumstances. Rather, I find it reasonable that upon receiving further complaints from the tenant the landlord would attend the tenant's rental unit to determine if smoke is in fact infiltrating her unit and if so, to what extent and the likely point of entry. If so, then the landlord may determine what course of action is reasonable and necessary to comply with the Act.

Based upon the tenant's evidence, including verbal testimony and documentary evidence, I accepted the tenant may have experienced smoke in her unit and I did not

find it necessary to hear from her witnesses. However, based upon the disputed evidence before me, I found it less clear as to the origin or source of the smoke. I also find it reasonably likely that future instances of smoke infiltration may cease or be significantly reduced after this hearing.

In light of the above, I find the steps proposed during the hearing to determine whether smoke infiltration continues to be a problem to be appropriate in the circumstances and I make those steps an ORDER, to be binding upon both parties. I further ORDER the landlord to investigate the point of entry if smoke is detected in the rental unit. Should the smoke be originating from within the building the landlord must take sufficient action to block the airflow between units, and any other repairs or remedies necessary and appropriate to comply with the Act.

Failure to fulfill the orders contained in this decision form a basis to file a future Application for Dispute Resolution seeking further remedy.

### Conclusion

I have issued orders to both parties that are to be fulfilled should the tenant experience another instance of smoke infiltration in her rental unit.

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 07, 2013

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Residential Tenancy Branch



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes:

**OLC, FF, SS**

Introduction

This hearing was scheduled in response to the tenant's Application for Dispute Resolution, in which the tenant requested Orders that the landlord comply with the Act. The tenant also requested an Order for substitute service and to recover the filing fee from the landlord 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

The parties confirmed receipt of all evidence supplied by the other.

The landlord and Residential Tenancy Branch (RTB) were each given a CD by the tenant; no content could be seen.

The tenant served the landlord and the RTB with a flash drive device which contained a video of the tenant; this device was able to be viewed and was considered.

The tenant did not require an Order for substitute service.

Issue(s) to be Decided

Must the landlord be Ordered to comply with the Act?

Is the tenant entitled to filing fee costs?

Background and Evidence

The tenant has lived in the rental unit for the past 8 years. The building is wood-frame construction and was built in 1976.

When explaining his application the tenant listed a number of concerns that he has in relation to the management of the building. The tenant said that the failure of the landlord to deal with issues has resulted in a loss of quiet enjoyment to the tenant.

The tenant indicated that the following matters were of concern:

- Occupants are allowed to smoke on their balconies and the smoke disturbs the tenant;
- The landlord refuses to prop open several exit doors on the main floor;
- The landlord refuses to move the tenant to a unit on the upper floor of the 3 storey building;
- That other occupants have multiple guests visit and that the guests will smoke on the balconies; and
- The occupant in the unit above the tenant disturbs him by dropping things and walking around.

The video supplied by the tenant showed the tenant confronting an adult male, who was using a couch in a lounge area of the building. The tenant demanded to know who the adult was visiting; which resulted in the adult using his telephone to call his mother and asking her to come out to speak with the tenant.

The tenant supplied a significant amount of evidence, some of which included photographs of the main floor-level doors, walkways, lighting, a bench at the front of the building where people smoke; newspaper articles in relation to a smoking ban inside the building; pictures of the managers and other occupants and letters of warning issued to the tenant by the landlord

The landlord said that the building is run by a non-profit agency and that they do not allow moves within the building. When a vacancy occurs, the landlord can only afford to prepare 1 unit for rent; vs. the 2 unit preparation that would be required if they allowed internal moves.

The landlord said that the building is inspected as required by the fire department and that no safety issues have been raised.

The landlord said he did not understand the purpose of the tenant's application; the tenant respond that he wanted quiet; however he did not want any hard feelings. The tenant said he would not bother the landlord.

The landlord was ready to have witnesses testify in relation to the tenant's behaviour; however the need for witnesses was deemed unnecessary; given the nature of the application.

### Analysis

The Act entitles a tenant to the peaceful enjoyment of their home. In this case, from the evidence before me, I cannot find any deficiency with the management of the building or the actions of the landlord.

The tenant resides in an older wood-frame building, where it can be expected you would hear sounds of items being dropped or other occupants moving about; these are the

sounds of normal day-to-day living. There was no evidence before me of any unusual disturbances experienced by the tenant.

There was no evidence before me that the landlord has not maintained the building properly or that the landlord has failed to ensure the points of entry to the building are safe. There was also no evidence before me that occupants are not allowed to smoke on their balconies. The Act does not require a landlord to allow a tenant to move within a rental building and Orders cannot be issued unless there is a breach of the landlord's obligations, as set out in the Act.

I found that the video evidence, in fact, showed the tenant acting in what I would describe as an aggressive manner with the adult son of another occupant. During the hearing I warned the tenant that this evidence, which he supplied, did not reflect appropriate behaviour on his part. The tenant was told that any concerns he might have in relation to the presence of others, or their behaviour, should be passed on to the landlord. The tenant was told that other occupants are allowed to have guests visit and that the tenant cannot expect the landlord to prohibit this right.

I find that the tenant's application, while accompanied by written submissions, failed to supply anything more than a list of grievances against the landlord, which were unsubstantiated and almost frivolous in nature.

Therefore, in the absence of any evidence that the landlord has breached the tenant's right to quiet enjoyment I decline to issue Orders and dismiss the tenant's application.

### Conclusion

The application is dismissed.

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: January 10, 2013.



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      OLC FF

### Introduction

This hearing dealt with an application by the tenant for an order that the landlord comply with the Act. The tenant, the landlord and an interpreter for the landlord participated in the teleconference hearing.

The landlord did not serve all of their evidence on the tenant. The only evidence of the landlord that is admissible is the two-page complaint letter from the downstairs tenants that the landlord did serve on the tenant. The landlord received the tenant's evidence, and the tenant's evidence is admitted. 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

Should the landlord be ordered to comply with the Act?

### Background and Evidence

The tenancy began on November 1, 2006. The rental unit is an upper unit in a house, and the lower portion of the house is a separate unit occupied by different tenants under a separate tenancy agreement.

### *Tenant's Evidence*

New tenants moved into the downstairs unit in May 2012. The new downstairs tenants frequently smoked cigarettes and marijuana in their rental unit as well as just outside the house, and cigarette butts were littered around the house.

On December 9, 2012, the downstairs tenants had a party, and a fight ensued where the police were called. The tenant stated that on that date, there was so much smoke from downstairs that had come up into their unit that they felt like they were in a nightclub.

Since the tenant filed his application for dispute resolution, there has been a bit of a change, but even the night before the hearing the downstairs tenants were smoking marijuana near the house and the smell affected the upstairs tenant.

The tenant seeks an order requiring the landlord to ensure the tenant's quiet enjoyment of his rental unit, particularly ensuring that it is free from cigarette and marijuana smoke.

#### *Landlord's Response*

The downstairs tenants do not have a no-smoking clause in their tenancy agreement. When the landlord received the upstairs tenant's complaint the landlord asked the downstairs tenants if they were smoking, and they denied smoking marijuana. The landlord asked the downstairs tenants to only smoke outside and to keep quiet. The landlord also talked to the upstairs tenant and told him that if the downstairs tenants are smoking marijuana, the upstairs tenant should call the police right away. Work has been done to clean up the cigarette butts.

#### Analysis

I find that it is appropriate in this case to order the landlord to comply with section 28 of the Act. Under section 28, a tenant has the right to quiet enjoyment of their rental unit, free from significant interference or unreasonable disturbance. In this case, I accept that the upstairs tenant has suffered a reduction in the quiet enjoyment of his rental unit because of the significant amount of cigarette and marijuana smoke or odour in the upper unit, caused by the downstairs tenants' smoking.

As the tenant was successful in his application, he is entitled to recovery of the \$50 filing fee for the cost of his application.

#### Conclusion

I hereby order the landlord to comply with section 28 of the Act. The landlord must ensure that the tenant has quiet enjoyment of his rental unit, free from significant interference or unreasonable disturbance.

The tenant is entitled to \$50, which he may deduct from his next month's rent.

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 8, 2013

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Residential Tenancy Branch



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding Tiffany Centre & Argentis Properties  
and [tenant name suppressed to protect privacy]

## DECISION

Dispute Codes      OLC, RP, FF

### Introduction

This hearing dealt with the tenants' Application for Dispute Resolution seeking an order to have the landlord make repairs and comply with the *Residential Tenancy Act (Act)*, regulation or tenancy agreement. The hearing was conducted via teleconference and was attended by the tenants and the landlord.

During the hearing both parties made reference to a previous decision from an Application for Dispute Resolution by the tenants that resulted in a settlement agreement dated February 12, 2010 and despite neither party providing a copy of the decision they agreed to allow me to consider the decision. I have done so.

### Issue(s) to be Decided

The issues to be decided are whether the tenants are entitled to an order requiring the landlord to comply with the *Act*, regulation or tenancy agreement and to make repairs; pursuant to Sections 27, 28, 32, 67, and 72 of the *Residential Tenancy Act (Act)*.

### Background and Evidence

The landlord's agent testified that the current landlord took over possession of the property on December 4, 2012 and has submitted the following documents into evidence:

- A copy of a tenancy agreement signed by the tenants and the previous landlord for a 1 year fixed term tenancy beginning on December 1, 2007 that converted to a month to month tenancy on December 1, 2008 for a monthly rent of \$825.00 (including parking for 1 vehicle) due on the 1<sup>st</sup> of each month with a security deposit of \$400.00 paid on November 1, 2007; and

- A copy of a tenancy agreement signed by the tenants and the current landlord for a month to month tenancy beginning on December 4, 2012 for a monthly rent of \$876.00 (including parking for 1 vehicle) due on the 1<sup>st</sup> of each month with a security deposit of \$400.00 paid on November 1, 2007.

Both tenancy agreements include specific clauses and the new tenancy agreement has some additional clauses that are relevant to the tenant's Application. Specifically, the relevant clauses from the previous tenancy agreement and the relevant clauses in the new tenancy agreement include:

- Clause 14 that prohibits the tenants from installing a washer and dryer;
- Clause 20 that stipulates "only vehicles listed in the tenancy application and no other vehicles may be parked, but not stored, on the residential property. Vehicles must not leak fluids and must be in operating condition, currently licensed, and insured for on-road operation";
- Clause 43 (new) states "Smoking of tobacco products only is limited to the area described as smoking on deck outside"; and
- Clause 44 (new) stipulates the tenants will remove the tenant's RV from the back lot.

The tenants submit that they have been requesting some repairs for several years but the previous landlord never completed the repairs and that they have since made the same requests to the new landlord.

Specifically the tenants seek the following repairs:

- Repairs to the ceilings in the bathroom and the dining room that had been damaged from water damage from previous flooding above the rental unit;
- Repairs to doors in one of the bedrooms and the hallway closets;
- Repairs to the kitchen sink drain that clogs every 3 to 4 days;
- Replacement of old carpets – the tenants submit that the carpets are old but still serviceable except for the stains and cigarette burns.

The landlord confirms that they met with tenants in December 2012 and reviewed some of the issues identified by the tenants and agreed to complete the repairs to the ceilings. However the landlord understood the tenants would be leaving the rental unit in July 2013 during elevator renovations and thought he would complete the ceiling repairs at that time to minimize the inconvenience to the tenants.

The landlord also testified that as a result of the issues identified in the tenants' Application he met with them again last week to inspect the rental unit and look at the other issues identified. The landlord submits that the closet door repairs are very minor and he will take care of them but that he will not be replacing the carpet as it is useable and the tenants have used area rugs to cover any unsightly marks or stains.

The landlord also submits that he has responded on 2 occasions to the tenants' reports of a plugged kitchen sink and that on both occasions he has run water for several minutes with no blockage problems, he does not see any problems with the plumbing.

The tenants also seek an order to require the landlord to allow the tenant to reinstate parking of her recreational vehicle (RV) in the parking lot. The tenants submit that the previous landlord had allowed them to park the RV in the lot while the rest of tenant parking is in the covered parking area. The tenants acknowledge that they did not have written permission or approval from the previous landlord for this parking.

The landlord submits that the tenants had parked the RV across four parking stalls in the parking area that is to be utilized by the commercial leaseholders on the first floor for their customers and points to the tenancy agreement that stipulates parking for one vehicle only and not for vehicle storage.

The tenants seek clarification on the issue of having a washer and dryer in the rental unit. The tenants submit that they have had the washer and dryer for several years and that the previous landlord's only concern was that he did not want the dryer vented outside through any windows, suggesting the landlord was aware of their use of the washer and dryer.

The tenants contend that despite the landlord having laundry facilities in the residential property it is too difficult for the tenants, due to their age and disabilities, to utilize the facilities provided. The tenants acknowledge they do not have permission in writing from the previous landlord allowing them to install a washer and dryer.

The tenants also submit that in a settlement agreement, documented through a February 12, 2010 dispute resolution decision with the previous landlord, where the landlord agreed to compensate the tenants for laundry services when they were forced to stay in a hotel after a flood in the unit confirms that the landlord was aware that they had their own washer and dryer in the unit.

The landlord submits that there is no documentation in the file that he received from the previous landlord that indicates the landlord had provided permission or was even aware the tenants had a washer and dryer in the unit.

The landlord submits that the settlement agreement also provides that the previous landlord agreed to compensate the tenants for hairstyling costs and as such the inclusion of the previous landlord's agreement for compensation for certain items does not provide conclusive confirmation that the landlord had agreed to allow the tenants to have a washer and dryer.

The parties agree the landlord has informed the tenants that beginning on July 2, 2013 the landlord has arranged to have upgrades completed to the elevator. The landlord confirms that he has no choice but to make these upgrades as a result of an order from the BC Safety Authority and that the work will take approximately 3 weeks to complete.

The tenants testified the landlord is suggesting that they take vacation at that time but that they cannot afford to leave the rental unit at the time but that to stay there without the use of an elevator will seriously inconvenience both tenants, in part due to their age and disabilities. The tenants testified that they have a number of ongoing medical appointments and general day to day living requirements mean that the tenants cannot just stay in the unit for three weeks.

The tenants also raised concerns that they fear being evicted by the landlord as a result of the smoking restriction in the new tenancy agreement. The tenants submit that they informed the landlord that one of the tenants smokes in her room and when they have guests over they smoke on the balcony.

The landlord testified that he simply recorded where the tenants identified that they usually smoke in the tenancy agreement and that he would not end a tenancy if the tenant smoked elsewhere in the unit.

### Analysis

Based on the testimony of both parties, I accept the landlord intends to complete repairs to the bathroom and dining room ceilings and hall closets. As the tenants have indicated that they do not intend to vacate the property for 3 weeks in July 2013 I order the landlord to make these repairs within 3 weeks of the date of this decision. I accept, from the testimony of both parties, there is no need, currently, to replace the carpeting.

In relation to the tenants' concerns regarding the plumbing problems I accept that the landlord has responded to urgent requests from the tenants for unclogging the drain, however, as the tenants claim that these problems are ongoing, I order the landlord to have a qualified plumber assess the kitchen sink drain to determine if there are any issues with the drains and if the plumber identifies any problems that they are corrected within 3 weeks of the date of this decision.

In relation to the issue of parking the tenants' RV, I find in the absence of any written approval from the previous landlord the current landlord has authority under the tenancy agreement to restrict the tenants parking of vehicles to the terms in the agreement.

As such, I find the tenants are entitled to park only one vehicle that is insured for on-road operation in the areas designated for residential tenant parking and as long as parking the tenants' RV does not conflict with this finding the tenant may park the RV.

In regard to the issue of the washer and dryer, again I find in the absence of any written permission or acknowledgement from the previous landlord that the tenants were authorized to install and/or use a washer and dryer in their unit the current landlord is entitled to enforce the terms of the original tenancy agreement that prohibit the use of a washer and dryer in the rental unit.

As to the tenants' assertion that the previous settlement agreement (dated February 12, 2010) confirms the landlord was aware of the fact the tenants had a washer and dryer in the unit, I note that there is no indication in that decision that this was why the landlord agreed to provide compensation for laundry during the tenants' hotel stay.

Section 28 of the *Act* states that 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 the *Act*; use of common areas for reasonable and lawful purposes, free from significant interference.

In many respects the covenant of quiet enjoyment is similar to the requirement on the landlord to make the rental units suitable for occupation which warrants that the landlord keep the premises in good repair. For example, failure of the landlord to make suitable repairs or upgrades required by law could be seen as a breach of the covenant of quiet enjoyment because failure to do so would deteriorate occupant comfort and the long term condition of the building.

Residential Tenancy Policy Guideline 6 stipulates that “it is necessary to balance the tenant’s right to quiet enjoyment with the landlord’s right and responsibility to maintain the premises, however a tenant may be entitled to reimbursement for loss of use of a portion of the property even if the landlord has made every effort to minimize disruption to the tenant in making repairs or completing renovations.”

As such, I find there is no requirement for the tenants to leave the property during the elevator upgrades, except as a possible mitigation against any loss or damage, and that the landlord must consider options, specific to the needs of these tenants and their medical conditions, to assist the tenants in accessing their rental unit during the time required to complete the upgrades or to provide the tenants with compensation in lieu of any assistance.

While the obligation is on the landlord to determine how to ensure access to the rental unit is available and/or provide compensation I encourage the parties to discuss and agree upon possible options in advance of the work. The tenants remain at liberty to file an Application for Dispute Resolution seeking compensation, subject to their requirement to mitigate any damages or losses, should the landlord fail to meet this obligation.

And finally, in regard to the issue of smoking, I accept from the landlord’s testimony and find that the clause in the tenancy is not a material term of the tenancy and as such cannot be used as a cause to end the tenancy should the tenants or their guests smoke in any other areas of the rental unit other than the balcony/deck.

### Conclusion

I find the tenants are entitled to monetary compensation pursuant to Section 67 in the amount of **\$25.00** comprised of ½ of the \$50.00 fee paid by the tenants for this application, as they were only partially successful. I order the tenants may deduct this amount from a future rent payment in accordance with Section 72(2)(a).

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 28, 2013

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Residential Tenancy Branch



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### **Dispute codes**

CNC

### **Introduction**

This hearing was convened in response to an application filed on December 06, 2012 by the tenant to cancel a 1 Month Notice to End Tenancy for Cause (the Notice to End) dated July 04, 2012, with the reasons as:

*Tenant or 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.*
- *put the landlord's property at significant risk.*

For this type of application, the onus is on the landlord to prove the Notice to End was issued for sufficient reasons, and that at least *one reason* must constitute sufficient cause for the Notice to be valid. The landlord is not required to prove all reasons stipulated for ending the tenancy

Both the tenant and the landlord appeared in the conference call and each participated in the hearing via submissions and their testimony.

At the outset of the hearing the landlord orally requested an Order of Possession.

### **Issue(s) to be decided**

Is there *sufficient* cause to end the tenancy?

Is the landlord entitled to an Order of Possession?

### **Background and evidence**

This tenancy began July 01, 2012 as a verbal tenancy. The 2 tenants occupy the lower portion of the residential house and the landlord occupies the upper portion. The

tenancy agreement is that the rent is \$700.00 per month payable in advance. The parties agree that the rent amount includes basic cable service and the use of laundry facilities by the tenants. It must be noted the parties agree that the tenants were told that smoking was only permitted on the residential property *outside* of the rental unit as second hand smoke was injurious to the landlord's health and the occupants with the landlord.

The landlord claims the tenant was given the Notice to End November 01, 2012 although it was dated July 04, 2012, for reasons unknown to the landlord. The tenant testified and submitted they received the Notice to End November 27, 2012. Along with this anomaly, the tenant submits the Notice to End did not contain the tenant's last name and that the landlord used '*white-out*' on the form and the landlord's signature is suspect – which the tenant argued makes the Notice invalid to end the tenancy.

None the less, the landlord testified that their reasons for wanting to end the tenancy were that the tenant smokes in the rental unit and that the smoke enters the landlord's upper unit and disturbs the landlord and is injurious to them. The landlord claims this is the paramount reason for wanting to end the tenancy. In addition, the landlord claims the tenant has not paid all of the rent in the past 90 days but this is a secondary matter for the landlord. The landlord claims the tenant allows non-residents to use the laundry facilities, and the tenant incurs additional costs to the television cable service (movie rentals). The tenant testified that they received advice not to pay all the rent and has not done so, but understands the advice was not prudent. The tenant did not dispute allowing others to use the laundry. The tenant testified they have paid a quantum toward some of the extra cable charges and understand such charges are the tenant's responsibility. The tenant agrees that a condition of the tenancy is that they must not smoke inside their rental unit / indoors, but that they have not always smoked outside of the rental unit and have smoked inside the unit.

### **Analysis**

I accept the tenant's testimony that in the least they received the Notice to End within November 2012. I find that the unexplained date on the Notice to End, the lack of a last name for the tenant, and the other issues identified by the tenant, while inconsistent with a proper completed Notice to End do not fatally impact the tenant's rights. I find the tenant was not misled by the improperly completed Notice, and successfully was able to dispute the Notice in the prescribed time to do so, and in general does not prejudice the tenant's case. I find the landlord's Notice to End, as given, is not invalid so as to cancel the Notice. Therefore, this matter must be determined on the merits of the landlord's

reasons for wanting to end the tenancy. I find the testimony of the tenant and the landlord, clearly, is that the tenant breached a term of the tenancy agreement by smoking in the rental unit. I find that the tenant knowingly smoked in the unit contrary to the tenancy agreement, and in so doing unreasonably disturbed the landlord.

On the preponderance of the evidence and testimony provided, and on the balance of probabilities I accept the landlord's testimony and find the landlord has met the burden of proof in showing he had *sufficient* cause to end this tenancy on the basis the tenant : *Significantly interfered with or unreasonably disturbed another occupant or the landlord and seriously jeopardized the health or safety or lawful right of another occupant or the landlord.*

Therefore, I uphold the landlord's Notice to End and the tenant's application to cancel the landlord's Notice to End is **dismissed** without leave to reapply. The landlord is hereby entitled to an **Order of Possession** as requested.

Section 55 of the Act, in part, states as follows: emphasis mine.

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

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

- (a) the landlord makes an oral request for an order of possession, and
- (b) the director dismisses the tenant's application or upholds the landlord's notice.

(3) The director may grant an order of possession before or after the date when a tenant is required to vacate a rental unit, and the order takes effect on the date specified in the order.

### **Conclusion**

The tenant's application is **dismissed**. I **Order** the tenancy will end. I grant an **Order of Possession** to the landlord effective **Thursday, January 31, 2013**.

If the landlord determines to end the tenancy, this **Order** must be served on the tenant. Should the tenant then 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.

**This Decision is final and binding on both parties.**

*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 15, 2013

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Residential Tenancy Branch



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      CNC, FF

### Introduction

This hearing dealt with a tenant's application to cancel a 1 Month Notice to End Tenancy for Cause. Both parties appeared or were represented at 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.

I determined that documentary evidence submitted to the Branch by the landlord had not been served upon the tenant. Under the Rules of Procedure, and as stated on the Notice of Hearing, evidence must be served upon the other party. I informed the parties that I would not accept or read the landlord's documentary evidence; however, she would be permitted to refer to and to read from those documents during the hearing.

I have amended the Application to correct the spelling of the landlord's name, as it appears on the Notice to End Tenancy.

### Issue(s) to be Decided

Should the Notice to End Tenancy be upheld or cancelled?

### Background and Evidence

The month-to-month tenancy commenced December 7, 2012 and the tenant is required to pay rent of \$720.00 on the 1<sup>st</sup> day of every month. There is a written tenancy agreement although neither party provided a copy of it as evidence.

The landlord served the tenant with an older version of a 1 Month Notice to End Tenancy for Cause (the Notice); however, I was satisfied that the Notice that was served conveyed information the tenant is required to receive under the Act and is misleading. Therefore, I considered the document otherwise valid and I continued to

hear whether the landlord has sufficient reason, or evidence of such, to end the tenancy.

The Notice to End Tenancy was served on February 19, 2013 and has a stated effective date of March 31, 2013. The reasons for ending the tenancy, as indicated on the Notice, are 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
  - seriously jeopardized the health or safety or lawful right of another occupant or the landlord
  - put the landlord's property at significant risk
- Tenant has engaged in illegal activity that has, or is likely to:
  - damage the landlord's property
  - adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant or the landlord
  - jeopardize a lawful right or interest of another occupant or the landlord.

In space provided on the Notice the landlord indicates she had received complaints from other tenants about excessive late night noise, including the running of the bathroom fan, and the smell of marijuana.

The landlord testified that there are "rules" that prohibit the tenant from using the premises for "illegal purposes". In the absence of a copy of the tenancy agreement I was unable to confirm that the "rules" formed a part of the tenancy agreement. The tenant did not have a copy of the tenancy agreement at the time of the hearing and indicated that he could not confirm or deny that the above "rule" formed part of the tenancy agreement.

The landlord submitted that marijuana smoke has been smelled in the common hallways. Other tenants have raised this issue with the landlord and the landlord has had a number of conversations with the tenant about the smell of marijuana smoke. When the landlord confronts the tenant about the marijuana smoke the tenant usually denies that it is coming from his unit; however, on one occasion the tenant admitted to the smoking of marijuana.

The landlord acknowledged that she had determined that another tenant in the building was responsible for the smell of marijuana smoke in the building but that particular tenant has since taken his marijuana smoking off the property and that tenancy is about

to end. Thus, the landlord is of the position that the continued smell of marijuana is coming from the tenant's rental unit. The landlord also acknowledged that cigarette smoking is permitted within units in the building and that cigarette smoke is detectible in the common hallways.

The tenant responded to the landlord's allegations by denying that there is smoking of marijuana in his unit except for one occasion where a marijuana cigarette was smoked on his balcony by a guest in February 2013. The tenant has smelled marijuana smoke in the hallways himself and has invited the landlord to come investigate it, and his unit, in an effort to demonstrate to her that the marijuana smoke is not coming from him or from within his unit.

With respect to loud noises, the landlord submitted that she received a written complaint on February 15, 2013 that there are loud noises coming from the rental unit between the hours of 2 a.m. and 4 a.m. including the sounds of: loud TV or video games; laughing, stomping, clanging from dishes being washed, and the bathroom fan running for long periods of time.

The tenant acknowledged that he is often awake in the early morning hours but denied that he plays his TV very loud and denied that video games are being played. During those hours he acknowledged that he may cook, do dishes, laugh, and run the bathroom fan. The tenant submitted that the property is very old, of wood frame construction, and that he also hears the activities of other tenants in their units.

The tenant was agreeable to ending the tenancy on a later date but the landlord was not agreeable to grant the tenant occupancy past the effective date of March 31, 2013.

### Analysis

Where a Notice to End Tenancy comes under dispute, the landlord has the burden to prove, based on a balance of probabilities, that the tenancy should end for the reason(s) indicated on the Notice.

Where one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof has not met the onus to prove their claims against the other party.

I find the disputed verbal testimony concerning marijuana smoking in the rental unit to be insufficient for me to conclude the tenant or a person permitted on the property by the tenant is smoking marijuana in the unit except the one time acknowledged by the

tenant, especially when I consider another tenant is known to have smoked marijuana in the building. Nor did the landlord provided sufficient details such as dates, times and location the marijuana was smelled so as to establish that the smoke is coming from the tenant or a person permitted on the property by the tenant as opposed to someone else.

As pointed out to the parties during the hearing, while smoking a marijuana cigarette may be an illegal activity, in order to end a tenancy for illegal activity I must be satisfied that the activity is so significant disturbing or dangerous that it jeopardizes the other tenants' right to quiet enjoyment, health or safety. I find that the one known occasion where marijuana was smoke on the tenant's balcony is not so significant to meet this criterion. Further, I find I was not presented any submissions that would demonstrate that the smell of marijuana smoke is so much more unpleasant or jeopardizing to one's health than the smoke from cigarettes that is present in the common areas.

With respect to noise complaints, I find several of the noises described in the complaint letter to the landlord are consistent with normal daily activities such as: watching TV, walking, laughing, cooking, doing dishes, and using the bathroom fan. Provided the noises associated to these activities are not excessively or unreasonably loud, a tenancy cannot be ended due to the sounds associated with such normal daily activities as tenants are entitled to use the unit for exactly those purposes. It may be helpful for the landlord to remind the complainant tenants that those living in multiple-unit buildings, especially those that are older and of wood frame construction, should expect to hear noises of daily activity coming from other units and to appreciate that not everyone keeps the same schedule.

I find the complaint related to clanging from doing dishes or running the bathroom fan does not constitute excessive or unreasonable noise. I find the disputed verbal testimony provided to me is insufficient to conclude the tenant is stomping on the floor, laughing unreasonably loud, or playing his TV unreasonably loud; however, if that is the case I find it reasonable to expect the landlord issue a warning letter to the tenant to notify him of such complaints prior to issuing him an eviction notice. Therefore, I do not end the tenancy for these reasons; but, I strongly encourage the tenant to be aware of the noise transference within the building and exhibit consideration toward other occupants, especially in the early morning hours when most others are likely trying to sleep.

In light of the above, I find the landlord has not proven, on the balance of probabilities, that the tenancy should end for the reasons indicated on the Notice and I cancel the Notice with the effect that the tenancy shall continue at this time.

As the tenant was successful in this application, I award the filing fee to the tenant. The tenant is authorized to deduct \$50.00 from a subsequent month's rent payment in satisfaction of this award.

Conclusion

The 1 Month Notice to End Tenancy for Cause issued February 19, 2013 is cancelled and the tenancy continues. The tenant is authorized to deduct \$50.00 from a future month's rent to recover the filing fee from 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: March 22, 2013

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Residential Tenancy Branch



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      OLC, MNDC, FF

### Introduction

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

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 evidence and testimony before me that met the requirements of the rules of procedure; however, I refer to only the relevant evidence regarding the facts and issues in this decision.

### Issue(s) to be Decided

Are the tenants entitled to an order requiring the landlord to comply with the Act, to a monetary order and to recover the filing fee?

### Background and Evidence

The undisputed evidence shows that this tenancy began on March 15, 2012, monthly rent is \$1595.00 and that the tenants paid a security deposit of \$797.50 on or about February 24, 2012.

The rental unit is on the main floor, there is a basement suite rented to other tenants below the rental unit, and there are two other suites, one on top of the other above the tenants' rental unit.

The tenants' monetary claim is in the amount of \$2400.00, which they explained is compensation for loss of their quiet enjoyment. Additionally the tenants are seeking an order requiring the landlord to comply with the Act, regarding their quiet enjoyment.

*Tenants' evidence-*

The tenants submitted that beginning in July 2012, they notified the landlord of loud noises coming from the basement suite, with no results. The tenants said that beginning October 20, 2012, they again alerted the landlord through multiple text messages that the tenants in the basement suite were disturbing their quiet enjoyment by loud partying, excessive music, shouting and smoking in their suite late at night and into the next morning.

The tenants submitted that the basement suite tenants are frequent loud partiers, and often times are drunk. The tenants claimed that although they have communicated with the landlord about the excessive noise on numerous occasions, the landlord has failed to correct the problem.

Some of the noise described by the tenants was of the other tenants shouting at the top of their lungs, oftentimes with vulgarities.

The tenants provided evidence that on a number of occasions they have had to call the police to deal with the noise and parties occurring at the other rental unit. The tenants also documented how the smoke from the basement unit and outside patio drifts up into their rental unit.

The tenant submits that the landlord has failed to take corrective action and their quiet enjoyment is being impacted. The tenants also submitted that the landlord's method of handling the situation was to request the tenants arrange a meeting with the basement unit tenants to communicate their issues. According to the tenants this would not be possible due to the basement unit tenants failing to confirm a meeting time and due to the aggressive behaviour of those tenants towards the tenants. According to the tenants, this behaviour included using profane language directed to the tenants.

The tenants further said that the landlord has only responded 30%-50% of the times they issued complaints and that there has been no improvement since making the complaints.

The tenants seek an order that the landlord comply with the *Act*, regulations and tenancy agreement to take corrective action to protect their right to quiet enjoyment.

As to the tenants' request for monetary compensation, they explained that this amount was derived by calculating that their tenancy had been devalued by 50%. In further explanation the tenant said that both of them work and go to school, and due to the frequent noise disruptions, one tenant spends at least 3 nights each week away from the rental unit. The tenants claimed devaluation of the tenancy for 4 months, as that is the documented time period of making complaints to the landlord, with no results.

The tenants' relevant evidence included text messages to the landlord, the tenancy agreement and a statement from one of the tenant's boyfriend, supporting the allegation of excessive noise all night long.

#### *Landlord's evidence-*

In response, the landlord contended that for every complaint, they have acted proactively and as recently as 1 ½ weeks ago, the landlord placed a phone call to the basement unit tenants informing them their tenancy would end if the police were called one more time for noise complaints.

The landlord also argued that many of the problems could be resolved if all 4 tenants met with each other to talk about their complaints. The landlord has said that he would facilitate a meeting with the tenants.

The landlord's agent, who attended the hearing, said that he met with the tenants in the basement suite, and inquired as to why the tenants have failed to meet with them.

The landlord also pointed out that the residential property was an older character home with hardwood floors and was situated near a busy area of town.

The landlord pointed out that they had 3 ½ pages of documented response to the tenants' complaints.

The landlord's relevant evidence included copies of text message communication between the parties.

### Analysis

Base upon the oral and written relevant evidence and a balance of probabilities, I find as follows:

A breach of quiet enjoyment includes when a tenant's right to enjoy their premise in peace and without unreasonable disturbance. Temporary discomfort or inconvenience does not constitute a breach of a tenant's quiet enjoyment; however, substantial interference or ongoing disturbances can constitute a breach of a tenant's right to quiet enjoyment. Ongoing and unreasonable noise could result in the loss of a tenant's right to quiet enjoyment.

A landlord is required to balance and protect the rights of each tenant. While a landlord would normally not be held responsible for the actions of other tenants, a landlord must take reasonable steps to address and correct a situation where the landlord is aware that one tenant is unreasonably disturbing another tenant.

Section 47 of the *Act* provides that a landlord may end a tenancy by issuing a one month Notice to End Tenancy for Cause. One of several grounds that can be identified as a basis to end a tenancy is the ground that the tenant has significantly interfered with or unreasonably disturbed another occupant.

From the evidence provided by the tenants I am satisfied that there have been multiple noise complaints to the landlord. The tenants sent multiple text messages to the landlord, one on July 2012, but more importantly, beginning on October 20, 2012, with frequent requests to the landlord. On at least two occasions the tenants have also called the police to deal with the noise bylaw infractions.

I also do not find it reasonable that the landlord expects the tenants here and the tenants in the basement suite resolve their own difficulties, given the number of complaints having to be made by the tenants, the police complaints and the basement unit's tenants' aggressive attitude toward the tenants.

I find that the landlord has not taken appropriate and reasonable steps to address the concerns and complaints of the tenants, even after giving consideration to the age,

structure and character of the rental building. I do not find it reasonable that the tenants would endure noise levels in violation of the city noise bylaws.

Pursuant to section 62(1)(b) of the Act, I find that it is reasonable to order that the landlord take immediate measures to address and correct the issue of noise disturbances experienced by the tenants. This should include issuing immediate warning letters and if the problem does not resolve quickly, may require that a notice to end tenancy be issued pursuant to section 47 of the Act.

With respect to the tenants' request for monetary compensation for a loss of their quiet enjoyment and a subsequent devaluation of their tenancy, as I have found that the landlord's lack of taking effective corrective steps have led to the tenants' loss of quiet enjoyment, I find it reasonable that the tenants are entitled compensation for a devaluation of their tenancy.

Residential Tenancy Policy Guideline 6 states the determination of the amount by which the value of the tenancy has been reduced, the arbitrator should take into consideration the seriousness of the situation and the length of time over which the situation has existed.

Additionally the arbitrator can award damages for a nuisance that affects the use and enjoyment of the premises.

I find on a balance of probabilities that the ongoing, frequent noise disruptions from the tenants in the basement suite lasting at times until after the tenants have gone to work or school in the morning and smoking from the basement suite despite their written requests to the landlord that the tenancy has been devalued. I find a reasonable amount of compensation for that devaluation from noise and sleep disturbance to be \$300.00 per month, from October to the present, January 2013.

I therefore find the tenants have established a monetary claim of \$1200.00 (\$300.00 for each October, November, December 2012, and January 2013) for a loss in the value of the tenancy for those months.

The tenants may satisfy their monetary award by deducting the amount of \$1200.00 from their next or a future month's payments of rent in satisfaction of the award. The tenants should inform the landlord of their intention to redeem this amount when making a reduced monthly rent payment.

I also find that the tenants' application had merit and I therefore award them recovery of the filing fee of \$50.00. The tenants are further authorized to deduct the amount of \$50.00 from their next or a future month's rent payment.

Pursuant to Section 67 of the Act, I have provided the tenants with a monetary order for \$1250.00 in the event they do not make the deduction of \$1250.00 from a future rent payment. This order may be filed in the Provincial Court of British Columbia (Small Claims) for enforcement as an Order of that Court.

The tenants are at liberty to make further application for dispute resolution in the event the landlord fails to ensure the tenants their right to quiet enjoyment, seeking further financial compensation and orders for the landlord.

### Conclusion

I have granted the tenants' application and have ordered that the landlord comply with the *Act* by addressing the noise complaints received by the tenants and take appropriate and reasonable steps to address the problem. If the landlord fails to take reasonable measures the tenants may file a new application for dispute resolution.

I have granted the tenants a monetary award of \$1250.00, comprised of \$1200.00 for a devaluation of the tenancy and recovery of the filing fee of \$50.00.

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* and is being mailed to both the applicant and the respondent.

Dated: January 24, 2013



# Residential Tenancy Branch

RTB-136

## Now that you have your decision...

All decisions are binding and both landlord and tenant are required to comply.

The RTB website ([www.rto.gov.bc.ca](http://www.rto.gov.bc.ca)) has information about:

- How and when to enforce an order of possession:  
Fact Sheet RTB-103: *Landlord: Enforcing an Order of Possession*
- How and when to enforce a monetary order:  
Fact Sheet RTB-108: *Enforcing a Monetary Order*
- How and when to have a decision or order corrected:  
Fact Sheet RTB-111: *Correction of a Decision or Order*
- How and when to have a decision or order clarified:  
Fact Sheet RTB-141: *Clarification of a Decision or Order*
- How and when to apply for the review of a decision:  
Fact Sheet RTB-100: *Review Consideration of a Decision or Order*  
(Please Note: Legislated deadlines apply)

To personally speak with Residential Tenancy Branch (RTB) staff or listen to our 24 Hour Recorded Information Line, please call:

- Toll-free: 1-800-665-8779
- Lower Mainland: 604-660-1020
- Victoria: 250-387-1602

Contact any Service BC Centre or visit the RTB office nearest you. For current information on locations and office hours, visit the RTB web site at [www.rto.gov.bc.ca](http://www.rto.gov.bc.ca)

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Residential Tenancy Branch

#RTB-136 (2011/07)





# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      CNC

### Introduction

This hearing was convened in response to an application by the Tenant pursuant to Section 47 of the *Residential Tenancy Act* (the “Act”) for an Order cancelling a Notice to End Tenancy for Cause. The Tenant and Landlord were each given full opportunity to be heard, to present evidence and to make submissions.

### Issue(s) to be Decided

Is the notice to end tenancy valid?

Is the Tenant entitled to a cancellation of the notice to end tenancy?

### Background and Evidence

The tenancy started on March 2007. Monthly rent is \$480.00. On January 30, 2013, the Landlord personally served the Tenant with a One Month Notice to End Tenancy for Cause (the “Notice”).

The Notice lists the following reasons:

1. The tenant or a person permitted on the property by the tenant has:
  - a. Significantly interfered with or unreasonably disturbed another occupant or the landlord;
2. The tenant has engaged in illegal activity that has or is likely to:
  - a. Adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant or the landlord;
  - b. Jeopardize a lawful right or interest of another occupant or the landlord.

The Landlord states that the Notice has been issued for two reasons: noise and smoking of marihuana. The Landlord states that prior to January 30, 2013, the Landlord did not receive any noise complaints about the Tenant. The Landlord states that all that was heard was gossip and the Landlord has no facts or dates to support this reason. The Landlord states that a tenant who lives above the Tenant wrote a letter of complaint dated February 11, 2013 stating that the Tenant smokes "weed" and that the family can smell it in the halls. The Landlord states that the only other complaints come from last May and June 2012 and that the presence of the police did not occur prior to January 30, 2013.

The Tenant states that she does not smoke marihuana and that she herself can smell the smoking of marihuana all around. The Tenant states that she does not know who smokes the marihuana.

#### Analysis

Where a Notice to End Tenancy comes under dispute, the landlord has the burden to prove, on a balance of probabilities, that the tenancy should end for the reason or reasons indicated on the Notice and that at least one reason must constitute sufficient cause for the Notice to be valid. Given that there is no evidence to support any complaints of noise in relation to the Tenant made prior to the issuance of the Notice, I find that The Landlord has not substantiated that the Tenant has interfered with or disturbed anybody. Considering that the tenant's complaint in relation to marihuana was made after the issuance of the Notice, does not include evidence of witnessing the smoking of marihuana by the Tenant and taking into account the Tenant's evidence of also smelling the smoke and the Tenant's denial of smoking marihuana, I find the Landlord has failed to substantiate that the Tenant engaged in an illegal activity.

As the Landlord has not substantiated any of the reasons on the Notice, I find that the Notice is not valid. The Tenant is therefore entitled to a cancellation of the Notice and the tenancy continues.

Conclusion

The Notice is cancelled and the tenancy continues.

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 28, 2013

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Residential Tenancy Branch



# Dispute Resolution Services

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNR, MNDC, PSF, OPR, MNR

### Introduction

This hearing dealt with an application by the tenant for an order setting a notice to end this tenancy, an order compelling the landlord to provide services and a monetary order. Also addressed was the landlord's application for an order of possession and a monetary order. Both parties participated in the conference call hearing.

### Issues to be Decided

Should the notice to end tenancy be set aside?  
Is the tenant entitled to a monetary order as claimed?  
Should the landlord be ordered to provide services?  
Is the landlord entitled to a monetary order as claimed?

### Background and Evidence

The parties agreed that the tenancy began on March 1, 2012 and that monthly rent was set at \$800.00 per month. They further agreed that at the outset of the tenancy, the tenant paid a \$400.00 security deposit and a \$400.00 pet deposit. They further agreed that on February 3, 2013, the tenant was served with a 10 day notice to end tenancy.

The tenant testified that in each of the months of January and February, he paid \$700.00 in rent. He testified that he had a conversation with the landlord in which the landlord told him that he could deduct \$100.00 from his rent in January to compensate him because tenants in a lower unit were smoking and it was affecting him. The tenant testified that he believed that because the lower tenants continued to smoke in February, he should be entitled to deduct \$100.00 from that month's rent as well.

The landlord denied having permitted the tenant to make any deductions whatsoever and further testified that he received \$700.00 in the month of January and just \$300.00 in the month of February.

The tenant testified that it was his belief that the landlord was claiming that \$400.00 was part of the money that was owing for February because in May 2012, the tenant had applied his \$400.00 pet deposit to the rent and the landlord now wanted to recoup that money. The landlord denied that he was trying to recover the pet deposit and insisted that the tenant had paid just \$300.00 for the month of February.

The tenant seeks a rent reduction of \$100.00 per month because he claimed that the tenants in the lower suite were smoking in the unit, affecting his quiet enjoyment. The landlord testified that he had attended at the residence when the tenant complained about smoking and that he and the tenant had both gone into the lower unit and found that no one was smoking inside. The tenant denied that the lower unit had been found to be smoke free.

The tenant seeks a future rent reduction of \$100.00 per month because he pays all of the utility costs for the residential property despite the lower suite being occupied by a different tenant. He also seeks retroactive compensation of \$200.00 per month for 10 months for the period in which he has paid all of the utility costs.

The landlord testified that at the beginning of the tenancy, he told the tenant that the tenant was responsible for all utility costs and that his rent was lower than the market rent because he was paying for the utilities used by the tenant on the lower floor. The tenant denied that any such conversation took place and testified that he was paying market rent at \$800.00 per month.

The landlord seeks an order of possession and a monetary order for \$600.00 in unpaid rent.

### Analysis

First addressing the notice to end tenancy, although the tenant claimed that the landlord had permitted him to reduce rent for January, the landlord denied having done so and the tenant was unable to provide evidence to corroborate this claim. The tenant provided a video of a telephone conversation that he had with the landlord which he claimed proved that the landlord had agreed to reduce the rent, but upon having viewed the video, I find that it does not corroborate the tenant's story. Rather, it underscored the fact that the parties had a great deal of difficulty communicating due to a language barrier.

I find insufficient evidence to prove that the landlord agreed that the tenant could reduce January's rent in compensation for exposure to second hand smoke. I further find that on the tenant's own testimony, the tenant was aware that the landlord had not explicitly

given him permission to reduce his rent in February by any amount, but that he did so because he thought it would be fair.

I find that the tenant wrongfully withheld \$100.00 in rent for each of the months of January and February and I find that the landlord has grounds to end the tenancy. I therefore dismiss the tenant's claim for an order setting aside the notice to end the tenancy and I grant the landlord an order of possession. Given the circumstances, I find it appropriate to set the end of the tenancy at March 31, 2013. **The tenant is obligated to pay the full amount of rent due for the month of March.**

As the tenancy is ending, it is unnecessary to address the claims for an order compelling the landlord to provide services and for a future rent reduction and I dismiss those claims.

Although the landlord is required to give a receipt for any cash payment, the landlord did not do so for rental payments and therefore has deprived the tenant of the ability to prove the amount that was paid for rent. For this reason I find that the landlord has failed to prove that the tenant withheld an additional \$400.00 in rent for the month of February and I dismiss that part of the landlord's claim. As the tenant acknowledged having withheld \$100.00 for each month, I find that the landlord is entitled to recover that money and I award him \$200.00.

Turning to the tenant's monetary claim, the tenancy agreement is clear that rent is set at \$800.00 and that utility costs are not included in the rent. Although the landlord claimed that he explained to the tenant that rent was lower than the market rent to compensate him for paying utilities for the other suite, I find insufficient evidence to corroborate this claim. Given the poor communication between the parties, I find it more likely than not that the tenant did not have this understanding at the beginning of the tenancy.

I find that it is unconscionable for the tenant to be required to pay utilities for a portion of the rental unit which he does not occupy and I find that he is entitled to compensation for the period of time in which he paid for all of the utilities.

The tenant did not provide any invoices showing the amount of utilities paid or evidence to show the relative space between his living area and the area occupied by the other tenant. For this reason, this award is imprecise and must be characterized as "rough justice". Because the tenant has 6 children and there is just one person living downstairs, I find that the tenant and his family should be held responsible for most of the utility costs. I find that an award of \$750.00 is appropriate, which represents \$75.00 for each of the 10 months of the tenancy for which the tenant applied for compensation. I award the tenant \$750.00.

### Conclusion

The landlord is granted an order of possession. The landlord has been awarded \$200.00 and the tenant has been awarded \$750.00. Setting off these awards as against each other leaves a balance of \$550.00 payable by the landlord to the tenant. I grant the tenant a monetary order for \$550.00. This order may be filed in the Small Claims Division of the Provincial Court and enforced as an order of that Court. The tenant may also deduct this amount from March's rent if it has not yet been paid by the time he receives this decision. The balance of the tenant's claim is dismissed.

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, 2013

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Residential Tenancy Branch



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes CNC, AAT

### Introduction

This hearing was convened in response to an application filed by the tenant seeing to cancel a Notice to End Tenancy and seeking to compel the landlord to have access to and from the rental unit for the tenant and her guests.

Both parties appeared at the hearing of this matter and gave evidence under oath.

### Issue(s) to be Decided

Does the landlord have cause to end this tenancy? If not, should the landlord be compelled to allow the tenant and her guest's access to and from the rental unit?

### Background and Evidence

The Landor testified that two years previously tenant's daughter came to live with her in the suite which is one of multiple suites in the rental building. The landlord testified that while the daughter was resident there were fights, screaming, yelling and the tenant's daughter and guests smoked cigarettes and marihuana in the rental unit and outside the rental unit. The landlord testified that his other tenants were in fear of their safety and the landlord asked the tenant's daughter to vacate which she eventually did.

This past December the tenant advised that her daughter was 8 months pregnant and she and her common-law husband were out of work and had no place to live. The tenant says that her daughter's own rental unit had been flooded and there was mould and their landlord in that unit asked them to vacate by December 15, 2012 so that repairs could be undertaken. The tenant asked the landlord if her daughter could stay at the rental unit temporarily because of the emergency and the landlord agreed advising that they could stay only until January 1. The landlord testified however that the tenant's daughter could not leave so quickly due to unemployment and lack of income problems. Further, the fighting, screaming and yelling started up again and the landlord served a 1 month Notice to End Tenancy for Cause. The landlord testified that

he also discovered that the tenant had removed the smoke detector in her unit and this had him concerned.

The tenant says the landlord was going to allow her daughter to stay but only if she paid extra rent. The tenant says she had hoped her daughter and common-law husband would be gone by now and she understand that no one wished to live with the fighting and yelling that goes on. The tenant says that her daughter and common-law husband are under a great deal of stress and this causes the arguments. The tenant says the landlord did not help the situation when he served them with a 1 month notice to end tenancy as this caused a lot of anger.

The tenant says they never smoke in the suite but they do smoke outside. The tenant responded that the smoke detector was down because she was painting the rental unit. The tenant asked if the landlord would reconsider his position as the tenant's daughter and husband will be leaving this coming weekend.

The landlord agreed he attempted to raise the rent in the hope that the tenant and her daughter and son-in-law would leave and to pay for the extra wear and tear on the rental unit. However he does not wish to raise the rent he only wishes the tenant to vacate. The landlord responded that he had a very difficult time getting the tenant's daughter to leave last time she lived here and caused so much trouble. The landlord lives in the rental house too and he says he fears that the daughter and husband will not leave or, if they do, they will return again. The landlord testified that his family and the other tenants are frightened of the violence and arguments and they want this tenancy to end so they can live without that fear.

The tenant asked if the landlord could give her some time to leave.

### Analysis

The landlord has issued a 1 month Notice to End Tenancy for cause stating the tenant or person permitted on the property by her has significantly interfered with or unreasonable disturbed another occupant or the landlord. The landlord's undisputed evidence is that the daughter has lived in the rental unit previously and has been asked to leave for causing a disturbance. Now that she has returned the evidence shows that the daughter is once again displaying outbursts of anger and engages in yelling and screaming which frightens the resident landlord's family. I therefore find that the landlord has grounds to end this tenancy and I dismiss the tenant's application seeking to cancel the Notice to End Tenancy.

The landlord has requested an Order of Possession. When a tenant's application seeking to cancel a Notice to End Tenancy is dismissed and the landlord requests an Order of Possession the landlord is entitled to that Order.

The landlord has agreed to allow the tenant to remain until February 28, 2013 and I will therefore issue an Order of Possession effective on that date.

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 30, 2013

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Residential Tenancy Branch

Drafted by:  
Approved by:  
CLIFF No.:

David Maxwell  
Greg Steves, ED, HPB  
16151

s. 22

Dear s. 22

Thank you for your email of October 23, 2012 regarding second hand smoke in multi unit buildings governed by the *Strata Property Act*. I apologize for the delay in my reply.

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 three quarter 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* 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>.

Thank you, again, for writing.

Sincerely yours,

Rich Coleman  
Minister Responsible for Housing  
and Deputy Premier

Drafted by: David Maxwell  
Approved by: Greg Steves, ED, HPB  
CLIFF No.: 16383

s. 22

Dear s. 22

Thank you for your email of February 18, 2013 regarding second hand smoke in multi unit buildings governed by the *Strata Property Act*. I apologize for the delay in my reply.

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 three quarter 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* 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>.

Thank you, again, for writing.

Sincerely yours,

Rich Coleman  
Minister Responsible for Housing



## Crane, Bob OHCS:EX

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**From:** Page, Doug OHCS:EX  
**Sent:** Tuesday, February 19, 2013 12:32 PM  
**To:** Crane, Bob OHCS:EX; Maxwell, David OHCS:EX; Lam, Roger OHCS:EX  
**Subject:** FYI: Smoke Free Policy - Multi Unit Buildings

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**From:** Anderson, Maryann GCPE:EX  
**Sent:** Tuesday, February 19, 2013 12:29 PM  
**To:** Page, Doug OHCS:EX  
**Cc:** Murphy, Gloria OHCS:EX  
**Subject:** RE: Smoke Free Policy - Multi Unit Buildings

Thanks to you both  
FYI – Here is the final response



Smoking Policy,  
Multi Unit Bui...

### Maryann Anderson

Communications  
Ministry of Energy, Mines and Natural Gas  
Minister Responsible for Housing  
p: 250 952-0152  
w: [www.housing.gov.bc.ca](http://www.housing.gov.bc.ca)

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**From:** Page, Doug OHCS:EX  
**Sent:** Tuesday, February 19, 2013 12:22 PM  
**To:** Anderson, Maryann GCPE:EX  
**Cc:** Murphy, Gloria OHCS:EX  
**Subject:** FW: Smoke Free Policy - Multi Unit Buildings

Maryann,  
See Bob's comment below, but you're on it with BCH anyway. I've also made some edits in blue to the bullet on stratas, below.

Doug

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**From:** Crane, Bob OHCS:EX  
**Sent:** Tuesday, February 19, 2013 11:34 AM  
**To:** Page, Doug OHCS:EX; Lam, Roger OHCS:EX; Maxwell, David OHCS:EX  
**Subject:** RE: Smoke Free Policy - Multi Unit Buildings

I don't think the bullet about BC Housing is right. The attached is the latest info I have on smoking policies. Maryann is contacting BC Housing so they should be able to give her their latest wording.

<< File: Smoke-free housing in multi-unit dwellings 2013 01 14.vmbx >>

**Bob Crane**

Senior Policy Analyst  
Housing Policy Branch  
Office of Housing and Construction Standards  
PO Box 9844 Stn Prov Govt, Victoria BC V8W 9T2  
Phone: 778-679-9657  
[Bob.Crane@gov.bc.ca](mailto:Bob.Crane@gov.bc.ca)

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**From:** Page, Doug OHCS:EX  
**Sent:** Tuesday, February 19, 2013 11:07 AM  
**To:** Lam, Roger OHCS:EX; Crane, Bob OHCS:EX; Maxwell, David OHCS:EX  
**Subject:** FW: Smoke Free Policy - Multi Unit Buildings

Let me know if you have comments on the proposed bullets below....

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**From:** Anderson, Maryann GCPE:EX  
**Sent:** Tuesday, February 19, 2013 11:04 AM  
**To:** Murphy, Gloria OHCS:EX; Page, Doug OHCS:EX  
**Subject:** Smoke Free Policy - Multi Unit Buildings

Hi,  
We have an FOI going out (it's MoH, but Housing Policy and RTB were involved, and a number of your staff's emails are included).  
It's on smoke-free multi unit buildings. Looks like you were working with Health.  
So long story short, I just need a couple of response bullets on our position to the matter. Suggesting:

- All provincial social housing units, those managed directly by BC Housing are smokefree. Those developments managed by non-profit housing providers have varying policies about where tenants can smoke outdoors. (Checking with BC Housing on this one)
- For privately owned rental buildings and strata corporations, the decision on whether to have a smoke-free policy is up to the owners. ~~Particularly in strata corporations — the Strata council can introduce~~ corporations can by a ¾ vote of the owners pass a by-law to limit smoking in common areas or the strata lots/units, ~~but it is important that owners retain the flexibility to maintain control over their property.~~
- If a tenant in an apartment is having a problem with second-hand smoke – they should speak to their landlord. If they are unable to resolve the matter, they can apply for dispute resolution with the Residential Tenancy Branch.

Thanks  
Maryann

**Maryann Anderson**

Communications  
Ministry of Energy, Mines and Natural Gas  
Minister Responsible for Housing  
p: 250 952-0152  
w: [www.housing.gov.bc.ca](http://www.housing.gov.bc.ca)

## Crane, Bob OHCS:EX

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**From:** Crane, Bob OHCS:EX  
**Sent:** Friday, February 8, 2013 3:11 PM  
**To:** Lam, Roger OHCS:EX; Hope, Melanie OHCS:EX; McKinley, Maia OHCS:EX  
**Cc:** XT:HLTH Severs, Aaron  
**Subject:** Smoking Rate 70 Percent Higher For Those With Mental Illness

Interesting, I thought the rate would be higher than 36%.

## Smoking Rate 70 Percent Higher For Those With Mental Illness

By [Join Together Staff](#) | February 6, 2013 | [1 Comment](#) | Filed in [Mental Health](#) & [Tobacco](#)

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[http://www.drugfree.org/join-together/tobacco/smoking-rate-70-percent-higher-for-those-with-mental-illness?utm\\_source=Join+Together+Weekly&utm\\_campaign=99e61457d9-JTWN\\_Addn\\_Exprrt\\_Trt\\_Provdrs\\_Prptate\\_Strtpes\\_2813&utm\\_medium=email](http://www.drugfree.org/join-together/tobacco/smoking-rate-70-percent-higher-for-those-with-mental-illness?utm_source=Join+Together+Weekly&utm_campaign=99e61457d9-JTWN_Addn_Exprrt_Trt_Provdrs_Prptate_Strtpes_2813&utm_medium=email)

### **Bob Crane**

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**Phone: 778-679-9657 \*NEW\***  
[Bob.Crane@gov.bc.ca](mailto:Bob.Crane@gov.bc.ca)

## Crane, Bob OHCS:EX

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**From:** Crane, Bob OHCS:EX  
**Sent:** Friday, March 8, 2013 2:58 PM  
**To:** Canitz, Shelley L HLTH:EX  
**Subject:** RE: Smoking and mental illness

Shelly, I apologize for not getting back to you sooner on this. I'll give you a call to discuss it.

### **Bob Crane**

Senior Policy Analyst  
Housing Policy Branch  
Office of Housing and Construction Standards  
PO Box 9844 Stn Prov Govt, Victoria BC V8W 9T2  
Phone: 778-679-9657  
[Bob.Crane@gov.bc.ca](mailto:Bob.Crane@gov.bc.ca)

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**From:** Canitz, Shelley L HLTH:EX  
**Sent:** Friday, February 15, 2013 10:37 AM  
**To:** Crane, Bob OHCS:EX  
**Cc:** Lam, Roger OHCS:EX; Hope, Melanie OHCS:EX; Parasram, Karen HLTH:EX  
**Subject:** RE: Smoking and mental illness

Thanks so much, Bob – it was great to read the US experience on this and the evolution on this topic

This debate was very active in BC about 7 years ago – and the release of this pivotal report - <http://carbc.ca/Portals/0/PropertyAgent/558/Files/17/TobaccoLitRev.pdf> - changed the landscape in the health care sector completely, in my view (there is a good summary on page 25). In a rather short period of time, public health facilities stopped the practice of staff giving patients cigarettes as a reward for compliance and smoking inside completely stopped. A debate within psychiatric services went on for some time, but in the end, many began to treat tobacco misuse at the same time they treated the mental illness. In most HAs, I believe, psychiatric patient cannot smoke on the grounds – they are given nicotine replacement ('clean' nicotine', as opposed to cigarettes, in which they get the nicotine plus a myriad of carcinogens, tar, etc.)

The report I mentioned has similar evidence to the article on the fact that the high consumption of tobacco for these populations means a significantly premature death from things like cancer and heart disease....not something like suicide, which might be expected.

The tricky thing for the physician community is understand the impact that cessation can have for some patients. If a patient starts to reduce their tobacco use, their decreased tar levels means their liver processes their drugs differently – and those on certain drugs (e.g. anti-psychotic) must be regularly monitored so that their dosages decrease - if not, they will have complications.

In Vancouver, VCHA runs an outpatient clinic that focuses on such high-use populations, targeted towards marginalized and/or hard to treat populations, including people with a history of substance use and/or mental health issues – for up to 26 weeks, they get intensive counselling and free pharmacological treatment for

tobacco dependence. The Fraser Health Authority requires all contractors who run mental health clubhouses to offer tobacco cessation support.

A adjunct to this issue is the need for these people to live in smoke-free housing so their triggers for relapse are fewer. Might this be an area we could discuss – both for the vulnerable non-smoker and for the former smokers?

Thanks  
Shelley

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**From:** Crane, Bob OHCS:EX  
**Sent:** Friday, February 15, 2013 9:27 AM  
**To:** Canitz, Shelley L HLTH:EX  
**Cc:** Lam, Roger OHCS:EX; Hope, Melanie OHCS:EX  
**Subject:** Smoking and mental illness

Hi, Shelley. This is an interesting article.  
[Should Mentally Ill Patients Be Allowed to Smoke? | TIME.com](#)

**Bob Crane**  
Senior Policy Analyst  
Housing Policy Branch  
Office of Housing and Construction Standards  
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[http://www.drugfree.org/join-together/tobacco/commentary-smokers-with-mental-illness-deserve-treatment?utm\\_source=Join+Together+Weekly&utm\\_campaign=3a848fea2a-JTWN\\_CO\\_Leg\\_Debate\\_Drugged\\_Driving\\_Limits\\_21513&utm\\_medium=email](http://www.drugfree.org/join-together/tobacco/commentary-smokers-with-mental-illness-deserve-treatment?utm_source=Join+Together+Weekly&utm_campaign=3a848fea2a-JTWN_CO_Leg_Debate_Drugged_Driving_Limits_21513&utm_medium=email)

Commentary: Smokers With Mental Illness Deserve Treatment

By [Cheryl G. Heaton, DrPH](#) | February 12, 2013 | [1 Comment](#) | Filed in [Mental Health & Tobacco](#)

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## Commentary: Smoke-Free Housing Should be Safe and Secure

By David Dobbins | January 4, 2013 | 10 Comments | Filed in Community Related, Government, Tobacco & Youth

[http://www.drugfree.org/join-together/tobacco/commentary-smoke-free-housing-should-be-safe-and-secure?utm\\_source=Join+Together+Weekly&utm\\_campaign=03c77efdba-JTWN DEA Proposes Reglns Rx Drugs 11413&utm\\_medium=email](http://www.drugfree.org/join-together/tobacco/commentary-smoke-free-housing-should-be-safe-and-secure?utm_source=Join+Together+Weekly&utm_campaign=03c77efdba-JTWN_DEA_Proposes_Reglns_Rx_Drugs_11413&utm_medium=email)

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## Smoking in Multi-Unit Buildings

- BC Housing is in the process of converting some of our directly managed buildings to become smoke free. This is a process as existing tenants who may be smokers were not asked to move when the buildings were designated non-smoking.
  - There is not a blanket policy for directly managed BC Housing buildings and we allow non-profit housing operators to put policies in place that best meet the needs of their clients.
- For privately owned rental buildings and strata corporations, the decision on whether to have a smoke-free policy is up to the owners.
  - Strata corporations can by a  $\frac{3}{4}$  vote of the owners pass a by-law to limit smoking in common areas or the strata lots/units.
  - If a tenant in an apartment is having a problem with second-hand smoke – they should speak to their landlord. If they are unable to resolve the matter, they can apply for dispute resolution with the Residential Tenancy Branch.

## E-mail Message

---

**From:** Cathy Shen [SMTP:cshen@bchousing.org]  
**To:** Crane, Bob OHCS:EX [SMTP:Bob.Crane@gov.bc.ca]  
**Cc:**  
**Sent:** 2013-01-14 at 10:53 AM  
**Received:** 2013-01-14 at 10:53 AM  
**Subject:** FW: Smoke-free housing in multi-unit dwellings

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Hi Bob, sorry for the delay in getting this to you. Here is our response for the smoke-free piece. Let me know if you have any questions.

1. Develop a smoke-free housing policy for BC Housing that addresses the huge deficit in smoke-free housing by requiring all new social housing complexes to be designated as smoke-free. This will help to protect residents of social housing, including many residents with acute

BC Housing is the crown agency responsible for the delivery and administration of social housing on behalf of the provincial government. Most of the new social housing developments are built in partnership with non-profit housing providers in which the housing provider operates and manages social housing buildings.

BC Housing has operating agreements with these non-profit housing providers which gives responsibility for policy establishment, financial administration and property management to the housing providers.

2. Recognizing that there is a very small number of tobacco addicted vulnerable persons with mental illness or physical disabilities for whom smoking permissible housing may be required, BC Housing should:

a. grandfather existing units with resident smokers;

In May 2011, BC Housing started a pilot program where tenants moving into selected developments will sign addendums to their residential tenancy agreements acknowledging that they are moving into a building in which smoking is not permitted.

Current tenants in these buildings will be grandfathered so it will be sometime before a building would be completely smoke-free.

b. develop a strategy for addressing complaints of SHS where the smoke transfer is found to be excessive and consistent;

BC Housing addresses complaints made about SHS by its residents.

On behalf of housing provider members, BC Housing administers The Housing Registry, a central database of applicants in search of affordable housing. BC Housing and a number of non-profit and co-operative housing providers use The Housing Registry to house applicants as units become available. The Housing Registry's housing application form allows applicants to indicate housing preferences and health information, including possible respiratory illnesses, to assist with matching applicants to housing that best suits their needs.

c. educate tenants about free nicotine patches/gum or subsidized pharmacotherapy to help them quit smoking; and ...

As a landlord of directly-managed public housing sites, BC Housing ensures that the buildings and properties follow health, safety and housing standards established by bylaw.

In cases where social housing units are managed and operated by non-profit housing providers, BC Housing encourages tenants to contact the housing provider to discuss issues related to smoke-free housing, as well as to contact the Residential Tenancy Branch for more information regarding their rights as tenants.

Cathy Shen | Advisor, Strategic Planning, Executive Office | Chair, livegreen Employee Council | BC Housing | 778.837.1427 | Please consider the environment before printing this email.

From: John Bell  
Sent: December-11-12 3:14 PM  
To: Cathy Shen  
Subject: FW: Smoke-free housing in multi-unit dwellings

Can you pls follow-up with Bob. I will also send you his voice-mail msg.

From: Crane, Bob OHCS:EX [mailto:Bob.Crane@gov.bc.ca]  
Sent: December-11-12 1:41 PM  
To: John Bell  
Subject: Smoke-free housing in multi-unit dwellings

John, further to my phone message, this is the Clean Air Coalition position statement.

Thanks.

Bob Crane  
Senior Policy Analyst  
Housing Policy Branch

Office of Housing and Construction Standards

PO Box 9844 Stn Prov Govt, Victoria BC V8W 9T2

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