

WE'RE GOING TO POT:

***LEGAL IMPACTS OF MARIJUANA &
MEDICAL MARIJUANA ON
MANITOBA LANDLORDS***

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MARIJUANA IN THE NEWS

Cannabis plan reaction: Hopeful retailers prepare for business as city ponders regulations

Manitoba home to 2 licensed producers, vape shops and even First Nations who want to sell cannabis.

CBC News Posted: Nov 07, 2017 4:13 PM CT | Last Updated: Nov 08, 2017 11:07 AM CT



Manitoba premier says he won't follow Ontario cannabis model



Winnipeg Free Press

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Local

Manitoba legislation prepares for legal weed

No smoking at work or in the car

By: Larry Kusch

Posted: 03/20/2017 3:00 PM | Last Modified: 03/20/2017 7:47 PM | Updates | Comments: 42



Can residential landlords restrict cannabis activity in rental units?



Government of Canada

Gouvernement du Canada

Cannabis for medical purposes

GO PUBLIC | Landlord pays high price for renter's medical marijuana grow-op

'A grow-op, whether legal or not, is still a high-risk activity,' Insurance Bureau says

Analysis: How Manitoba's hazy plans for weed cloud Winnipeg's legalization preparations

Without knowing what the province has in store for cannabis retailers, the city can't formulate a plan

“MARIJUANA” VS. “CANNABIS”

- Cannabis refers to the plant named *Cannabis sativa*
- Formal legal designation is “cannabis”
- “Marijuana” and “cannabis” will be used interchangeably

OVERVIEW

1. Applicable Legislation
2. Legal Status of Marijuana
3. Impact on Landlords
4. Discrimination & Reasonable Accommodation
5. Case Law & Tribunal Decisions
6. Practical Considerations

1. APPLICABLE LEGISLATION

Legislation	Description
<i>Controlled Drug and Substances Act</i> (Canada)	Marijuana is illegal, save for medical purposes
<i>Cannabis Act</i> (Canada) (Not in force)	Will legalize marijuana, subject to certain restrictions
<i>Access to Cannabis for Medical Purposes Regulations</i> (Canada)	How individuals can grow / purchase medical marijuana
<i>The Residential Tenancies Act</i> (Manitoba)	Rights and obligations of tenants and landlords
<i>The Human Rights Code</i> (Manitoba)	Protects individuals / groups from discrimination
<i>The Safer Communities and Neighbourhoods Act</i> (Manitoba)	Ensures that properties not be used for unlawful activities that occur on a frequent / regular basis

2. CURRENT LEGAL STATUS OF MARIJUANA

- Schedule II Drug - *Controlled Drug and Substances Act* (Canada)
- Remains illegal, but for medical marijuana

2. FUTURE LEGAL STATUS OF MARIJUANA

- *Cannabis Act* (Bill C-45)
- Notable Objectives
 - Restrict youth access
 - Reduce burden on criminal justice system
 - Regulated, quality-controlled cannabis
- Coming Into Force (Anticipated): July 2018

2. FUTURE LEGAL STATUS OF MARIJUANA

- **Subsequent legislative action: Rules and Standards (FG)**
 - Types of products for sale
 - Standardized potency /serving
 - Production practices
 - Restrictions on promotion
- **Subsequent legislative action: Distribution and Sale (MB)**
 - Provide rules as to where / how marijuana to be sold
 - Restrict where consumption can occur

2. CURRENT LEGAL STATUS OF MARIJUANA: EXCEPTION - USE FOR MEDICAL PURPOSES

Access to Cannabis for Medical Purposes Regulations (“ACMPR”)

- Came into force: August 24, 2016
- Context
 - Culmination of legal / constitutional challenges
 - Individuals have a right to **use** marijuana as medication, choose **format** of delivery of the marijuana, and choose **supply** of the marijuana

2. CURRENT LEGAL STATUS OF MARIJUANA: EXCEPTION - USE FOR MEDICAL PURPOSES

- Authorization - Health care professionals
 - Practitioner's information
 - Name & DOB
 - Period of use (1 year max.)
 - How much per day
 - Dated & signed

2. CURRENT LEGAL STATUS OF MARIJUANA: EXCEPTION - USE FOR MEDICAL PURPOSES

- Supply Options
 1. Federally-licensed producer [Provide the Authorization to the producer]
 2. “Grow your own” [Personal Production = Reg. with Health Canada]
 3. Designate another person [Designated Production = Reg. with Health Canada]

2. CURRENT LEGAL STATUS OF MARIJUANA: EXCEPTION - USE FOR MEDICAL PURPOSES

Personal & Designated Production – Application for Registration with HC

Provide copy of authorization from health care professional and must:

1. Ordinarily live in Canada
2. Be of adult age
3. Have no cannabis / marijuana offence (last 10 years)

≠ **Owner's consent** if patient's "ordinary place of residence"

= **Municipal police forces** can request that patient produce Registration Certificate, otherwise production is "voluntary"

2. CURRENT LEGAL STATUS OF MARIJUANA: EXCEPTION - USE FOR MEDICAL PURPOSES

Personal Production – Health Canada Registration Certificate

- **Number** of plants
- **Amount** of dried marijuana
- Location of **production** site
- Location of **storage** site

Note: 5,000+ Registration Certificates issued to date

Designated Production – Health Canada “Document”

2. CURRENT LEGAL STATUS OF MARIJUANA: EXCEPTION - USE FOR MEDICAL PURPOSES

Personal & Designated Production – Key Limits & Restrictions

- Keep production / storage separate
- Two registrations per individual
- Four registrations per address
- Maximum possession (lesser of 30-day supply /150 grams or equiv.)
- Production can be inside or outside (but not both)
- Secure production / storage

2. CURRENT LEGAL STATUS OF MARIJUANA: EXCEPTION - USE FOR MEDICAL PURPOSES

Personal & Designated Production – Examples

1 gram dried marijuana / day results in:

- 5 plants indoors;
- 2 plants outdoors; or,
- 4 plants indoors and 1 plant outdoors (but not grown at the same time)

3 grams dried marijuana / day results in:

- 15 plants indoors;
- 6 plants outdoors; or,
- 11 plants indoors and 3 plants outdoors (but not grown at the same time)

3. IMPACT OF MARIJUANA ON LANDLORDS

Notable issues arising from the **use** of marijuana in rental properties:

- Property damage
- Inconvenience to other tenants
- Increased fire hazard
- Supply considerations

3. IMPACT OF MARIJUANA ON LANDLORDS

Notable issues arising from the **growing** of marijuana:

- Electrical, ventilation, water, fire hazards
- Insurance coverage voided / increased cost
- Health considerations
- Security considerations

3. IMPACT OF MARIJUANA ON LANDLORDS

<i>The Residential Tenancies Act (Manitoba) – Notable Landlord’s Obligations / Duties</i>	
11(2) 11(3)	Landlord may establish and impose written rules (“House Rules”)
11(4)	Landlord may enforce condominium’s declaration, by-laws, or rules (“Condo Rules”)
54	Landlord’s right to enter a rental unit
62	Landlord’s duty not to interfere with enjoyment of rental unit
66	Landlord must not unreasonably restrict access to a rental unit / common areas
67	Landlord’s obligation to investigate without delay and make reasonable effort to remedy complaints re: disturbances / safety issues

Note: Landlord’s rights to terminate the lease is dealt with in Avrom Charach’s presentation.

3. IMPACT OF MARIJUANA ON LANDLORDS

<i>The Residential Tenancies Act (Manitoba) – Notable Tenant’s Obligations / Duties</i>	
70	Tenant’s obligation to keep unit clean
71	Tenant must not alter or redecorate the unit
72	Tenant’s obligation to take reasonable care of the unit
73	Tenant’s obligation to not unreasonably disturb others
74	Tenant’s duty to not impair the safety / interfere with rights of others
74.1	Tenant must not engage in an unlawful activity in the unit
75	Tenant’s obligation to comply with House Rules
75.1	Tenant’s obligation to comply with Condo Rules

3. IMPACT OF MARIJUANA ON LANDLORDS

Is the following statement true or false?

The lease, House Rules, and/or Condo Rules do not permit smoking in a rental unit.

Therefore, any tenant who smokes marijuana violates the lease / the Rules and they can be the subject of an eviction notice.

3. IMPACT OF MARIJUANA ON LANDLORDS

Partially Right – The Law of Contract:

- **Even when marijuana becomes legalized**

If the lease, House Rules, and/or Condo Rules prohibit **smoking** (i.e. cigarette, marijuana, vaping) + the tenant “smokes” in the unit

= Violation = Landlord Recourse

- Highly fact dependent
- Burden of proof lies with the landlord

3. IMPACT OF MARIJUANA ON LANDLORDS

Partially Right – The Law of Contract:

- **Caution: Edible / Non-smoke marijuana products**
 - Not clear if ban of those products possible in lease or Rules
 - Repeated, disruptive tenant behavior

3. IMPACT OF MARIJUANA ON LANDLORDS

Partially Right – Human Rights Considerations:

- **Irrespective of the legal status of marijuana**

Tenants with a documented, medical need to use marijuana

= Concepts of discrimination & reasonable accommodation

4. DISCRIMINATION & REASONABLE ACCOMMODATION

The Human Rights Code (Manitoba) (the “Code”)

- Protects individuals / groups against discrimination
- Prohibits discrimination in the rental of residential premises:

All applicants have the right to have their application for tenancy considered without unreasonable discrimination

- Landlords, their agents and employees are all responsible
- Actual intent is not required (i.e. systemic discrimination)

4. DISCRIMINATION & REASONABLE ACCOMMODATION

The Human Rights Code (Manitoba) (the “Code”)

- “Protected characteristic” = Disability

“Physical or mental disability or related characteristics or circumstances, including reliance on a service animal, a wheelchair, or any other remedial appliance or device”

- Failure to **reasonably accommodate** special needs associated with a disability may amount to a prohibited form of discrimination

4. DISCRIMINATION & REASONABLE ACCOMMODATION

What is “Reasonable Accommodation”

- Proactively respond to a request for accommodation from a disabled tenant
- Determine if any reasonable accommodation(s) re: disability can be made
- Be prepared to show / prove steps taken to attempt to accommodate

Threshold = Actual “undue hardship”, not a mere belief

4. DISCRIMINATION & REASONABLE ACCOMMODATION

Not a One Way Street: Attempt to balance competing interests

- **Use** of Medical Marijuana
 - Other forms \neq Absolute right to use dried marijuana
 - Other venues
 - Landlords' / other tenants' rights impacted

- **Growing** of Medical Marijuana
 - Health Canada Certificate \neq Absolute right to grow in residence
 - Other alternatives to growing (i.e. licensed prod / designated ind.)

4. DISCRIMINATION & REASONABLE ACCOMMODATION

Examples of Reasonable Accommodation in Action	
Weatherstrip units	Facilitate tenant-to-tenant meetings (with consent of the disabled tenant)
Inspect, clean, and maintain HVAC systems (minimize SHS flow)	Request use of an air purifier
If smoking permitted, ensure written agreement that smoking will only occur in the tenant's unit, as opposed to common areas	Negotiate "smoke free" hours or an agreement to smoke only on balconies
Marijuana plants grown on a balcony, out of sight	Map out / group medical smokers together, create "buffer zones", and attempt to relocate others who complain of SHS
<i>Avoid claims of discrimination by applying / enforcing the lease and Rules to all, equally...</i>	

5. CASE LAW & TRIBUNAL DECISIONS

- Manitoba: Residential Tenancies Branch
 - Only a few reported decisions re: use / growing of marijuana
 - Majority deal with recreational use of marijuana
 - None dealing with medical marijuana
- Manitoba: Human Rights Commission
 - No reported decisions re: discrimination from use of medical marijuana in rental unit
- Other jurisdictions: Courts and tribunals of British Columbia and Ontario

5. CASE LAW & TRIBUNAL DECISIONS

Young v. Saanich Police Department, et al, 2003 BCSC 926, appeal dismissed 2004 BCCA 224, leave to appeal to the SCC refused:

The landlord alleges that the tenants have unreasonably disturbed other occupants contrary to section 36(1) of the Residential Tenancy Act. ... The real question is whether the smell of marihuana somehow entered the suites of the complaining occupants **as they have testified** because it is that type of disturbance that would almost certainly cross the line and be properly described as an unreasonable disturbance. [...] **Did the tenants disturb other tenants?**

The answer is yes. Other occupants complained about being disturbed and about feeling they had lost enjoyment of their home. They complained about an odour that made them feel ill or gave them headaches. Other tenants were adamant that they had to move. One did move. In my view, the tenants did disturb other occupants. ... **It is inconceivable that the tenant's right, indeed his need to smoke marihuana in order to treat his disease, could be used to defeat the rights of other occupants to peaceful enjoyment of their homes.** As the tenants disturbed other occupants, they breached article 13 of the Tenancy Agreement and section 36(1)(h) of the Residential Tenancy Act. [...]

5. CASE LAW & TRIBUNAL DECISIONS

Takeaways

- Documented evidence / testimonials are crucial
- Having tenants appear / testify always plays in Landlord's favour
- Capture full scope of the impact of marijuana smoke
- Medicate with marijuana ≠ absolute right to smoke it

5. CASE LAW & TRIBUNAL DECISIONS

SWL-87748-16 (Re), 2016 CanLII 37469 (ON LTB)

The Tenant has committed an illegal act involving the production of an illegal drug in the rental unit since his otherwise lawful permit to produce marijuana in his residence does not allow him to produce or store marijuana in his present rental unit.

However, I have considered all of the disclosed circumstances in accordance with subsection 83(2) of the Residential Tenancies Act, 2006 (the 'Act') and **find that it would not be unfair to grant relief from eviction**, pursuant to subsection 83(1) of the Act. [...]

Test applied by the Board:

Unless the offence has the potential to affect the character of the premises or to disturb the reasonable enjoyment of the landlord or other tenants, the landlord in my view does not have the right to evict.

5. CASE LAW & TRIBUNAL DECISIONS

[24] [...] Although [the Landlord] took **several photographs** of the Tenant's production site, [the Landlord] **did not submit any evidence** that the Tenant's marijuana production **had caused any damage to the rental unit, structurally or otherwise**. Similarly, although they had reasonable concerns that the Tenant's use of an extension cord and a power bar could represent an electrical hazard, the Landlord submitted no evidence suggest that the Tenant's use of these items posed any actual danger to the residential complex.

[25] More importantly, **there was no indication on the evidence that the Tenant was trafficking any of the marijuana grown in the unit or that he was stealing electricity to power the equipment used in his garden**. As well, **there was no evidence that the Tenant's activities in any way interfered with the other tenants' reasonable enjoyment of the residential complex**. [...]

5. CASE LAW & TRIBUNAL DECISIONS

Takeaways

- No evidence = No eviction
- Photographs, testimonials, documents = Collected in accordance with *The Residential Tenancies Act*
- * Be ready to prove scope of disturbance & risk posed by a tenant who is using medical marijuana

6. PRACTICAL CONSIDERATIONS: HOW TO MOVE FORWARD

- Ask the Right Questions Up Front
 - Smoking / Non-Smoking Status (Okay)
 - Smoke marijuana for medical purposes (More Risk)
- Employees / Agents Trained re: Discriminatory Practices
- Written Guidelines re: How to Apply Reasonable Accommodation

6. PRACTICAL CONSIDERATIONS: HOW TO MOVE FORWARD

- **Get the Basics Right**
 - Record and keep move in / out condition reports re: the rental unit
 - As applicable, specify “no smoking” in unit and include “marijuana” alongside cigarette smoke
 - Specify that the Landlord is not guaranteeing a smoke free environment
 - Document / record both the delivery and acceptance of the House Rules / Condo Rules by getting the tenant to sign an “Acknowledgement of Receipt”
- **Use of Marijuana is Suspected**
 - Always ensure to comply with *The Residential Tenancies Act*
 - Involve municipal police forces to investigate / document suspected use
 - Municipal police can compel the tenant to produce their Health Canada Registration Certificate (otherwise “voluntary” to produce the Registration Certificate for other parties)
- **Be wary of outright prohibiting edible / non-smoke marijuana**

6. PRACTICAL CONSIDERATIONS: HOW TO MOVE FORWARD

- **Make Sure to Fully / Properly Document**
 - Incidents
 - Actions taken so as to address the problem / accommodate
 - Interactions with the problematic tenant(s)
 - Other tenants' complaints
- **Warning Letters**
 - Early action is always better
 - Detail, reference, and describe the full scope of the violation(s)
 - Term(s) of the lease, House Rules, Condo Rules, or section of *The Residential Tenancies Act* violated
 - Ensure compliance with *The Residential Tenancies Act*
 - Keep all copies and require an "Acknowledgement of Receipt" signed by the tenant

6. PRACTICAL CONSIDERATIONS: HOW TO MOVE FORWARD

- Don't Lose Track of Former Tenants
 - When you have their new / more current contact information, easier to get written statements from them and have them come testify, as required
- Keep Abreast of Legislative Developments & Decisions
 - The underlying legislation is ever-changing
 - With time, hopefully prior to July 1st 2018, decisions and policies issued by the federal, provincial, and municipal governmental authorities will continue to provide additional clarification

Q & A

THANK YOU

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