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# Marijuana And Rental Properties

## Will Legalization Spread Problems Like a Weed?

Presented to  
Manitoba Non-Profit Housing  
Association

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# What is not a problem

- ▶ Consuming marijuana in foods, like brownies, does not disturb neighbours.
- ▶ Less likely to have vendors of marijuana as tenants since it will be a legal product
- ▶ The police will be free to concentrate on more important issues.
- ▶ People are less likely to be smoking marijuana in stairwells.
- ▶ As citizens, we will get tax from sale of the products. Deloitte estimates up to a \$22.6 billion economic impact due to taxation of the product.
- ▶ Hemp products – products made from the stems of plants - will become more available, and there are some very high quality hemp products out there including cosmetics and clothing.
- ▶ We can hope that our tenants will be more mellow and easier to deal with – at least that is what they say about people who use marijuana.

# What is the problem?

## Moisture

- ▶ One marijuana plant generates same moisture as seven to ten house plants, 4 one-meter high plants equates to 28 to 40 house plants

## Aggressive Cultivation = Higher Yields

- ▶ 4 one-meter high marijuana plants can generate 24 pounds of dry marijuana (enough for 10,896 1 gram joints or 49,810 pieces of hash brownie).

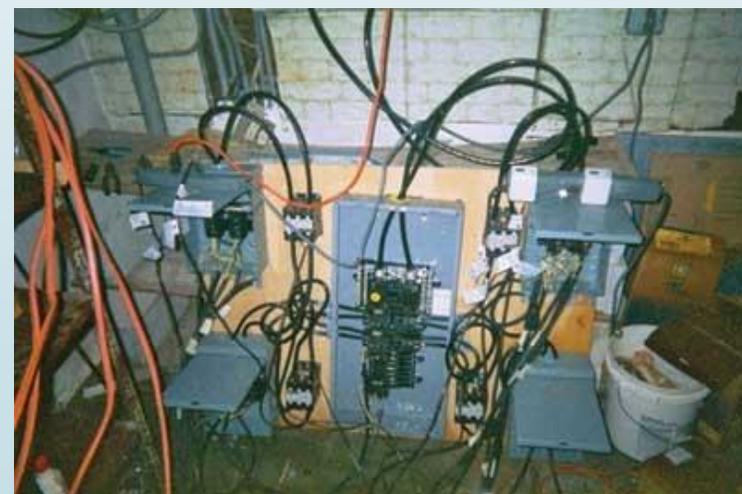
## Second-hand Marijuana Smoke Is Not Benign

- ▶ Studies have demonstrated tobacco smoke can infiltrate adjacent apartments
- ▶ Residents in multi-unit dwellings have high rates of exposure to nicotine.
- ▶ Children in multi-unit dwellings were significantly more likely to have tobacco smoke exposure, even if they lived in a non-smoking household.

## Growing marijuana

- ▶ Growing marijuana in multi-unit dwellings, or rented dwellings, is more problematic than marijuana smoking. Concerns include:
- ▶ Safety hazards
- ▶ Interference with other tenants (See Allard V Canada decision for some additional information on safety and interference)
- ▶ Potential damage to the building (perfect growing conditions are 40-70% humidity and 20-25 degrees with lots of light – so much that grow lamps are almost necessary)
- ▶ Potential liability for the landlord and risk to tenants and the mortgage holder
- ▶ Potential cancellation of building insurance or the calling of a mortgage, with financially disastrous results for building owners. There are documented cases of this. In Ontario and BC.

Source – Position Paper of Canadian Federation of Apartment Associations



# What legislation may protect us?

## The Residential Tenancies Act

### S 96(1) Termination for causes other than failure to pay

[96\(1\)](#) A landlord may give the tenant a notice of termination if

- (iv) [section 70 \(obligation to keep unit clean\)](#),
- (v) [subsection 72\(1\) \(obligation to take care and repair damage\)](#),
- (vi) [section 73 \(duty not to disturb others\)](#),
- (vii) [section 74 \(duty not to impair safety or interfere with rights\)](#),
- (vii.1) [section 74.1 \(unlawful activity by tenant\)](#),

and the tenant fails to remedy the contravention within a reasonable time after receiving written notice to do so by the landlord;

- (b) [the tenant breaches a material term of the tenancy agreement and fails to remedy the breach within a reasonable time after receiving written notice to do so by the landlord; or](#)
- (c) the tenant,
  - (i) [other than a tenant referred to in subclause \(ii\), fails to comply, within a reasonable time after having received written notice to do so from the landlord, with a rule as required by subsection 11\(2\) and the observance of the rule is essential to the reasonable operation of the residential complex, or](#)
  - (ii) [who is a tenant in a unit under \*The Condominium Act\*, fails to comply, within a reasonable time after having received written notice to do so from the landlord, with the declaration, by-laws or rules under \*The Condominium Act\*.](#)

### S 11(2) House rules

[11\(2\)](#) In addition to the obligations set out in a tenancy agreement, a [landlord may establish and enforce rules about](#)

- (a) [the tenant's use, occupancy or maintenance of the rental unit or residential complex;](#)
- (b) [the tenant's use of services and](#) (c) [the tenant's use of tenant services; facilities; and](#)

[\(if the rules are in writing, are made known to the tenant, and are reasonable in all the circumstances.](#)

### Provision or rule to be reasonable

[11\(3\)](#) A provision or rule is reasonable if

- (a) [it is intended to](#)
  - (i) [promote a fair distribution of services and facilities and, if applicable, tenant services to the occupants of the residential complex,](#)
  - (ii) [promote the safety, comfort or welfare of persons working or residing in the residential complex, or](#)
  - (iii) [protect the landlord's property from abuse;](#)
- (b) [it is reasonably related to the purpose for which it is intended;](#)
- (c) [it applies to all tenants in a fair manner; and](#)
- (d) [it is clearly expressed so as to inform the tenant of what the tenant must or must not do to comply with it.](#)



# What might be fair rules

- No growing allowed in suites
  - ❖ We will shortly see that numerous provinces have informed local landlords that this will be an option. The PPMA has formally asked Manitoba to allow this.
- No Smoking in suites
  - ❖ We have been told that the Non Smokers Protection Act will be expanded to include marijuana. As such no smoking buildings will also be marijuana smoke free.
- No Selling from suites
  - ❖ Once marijuana becomes legal it will conceivably not be illegal to sell it. That being said many landlords will have a no business run from your suite clause and that is deemed a fair rule. That being said we have tenants who might sell Avon or something like that but they do not have customers visit them.
- Special Tenant Insurance Requirement
  - ❖ Not sure if this will stick but we will position a request for this as similar to the one allowing insurance for waterbeds and aquariums – due to the requirement for water supplies and high humidity

# What the Provinces have asked for

Province	Smoke	Grow
BC	No	No
Alberta	No	No *
Saskatchewan	No	No *
Manitoba	No *	No (informal)
Ontario	No	No
Quebec	No	No
Nova Scotia	No	No
New Brunswick	No	No *
NL and Labrador		
Territories		

\* The province has indicated support of the request and/or granted it.



## Some decisions indicating support of concerns

- ▶ **Manitoba - ORDER NO: 2005W0715 - Tenant to pay \$9097.20 in repairs**
- ▶ As proof of the damage caused by the tenant, the landlord submitted photographs of the rental unit just after the tenant moved out. The photographs show that most of the damage was done to the basement. As depicted by the photographs, the tenant apparently built a grow operation for marijuana. Firstly, the entire basement appears to be filled with tables built out of pipe and wood. Secondly, wiring hung from every part of the ceiling and make-shift power outlets had been connected to the walls. Thirdly, a rather large hole had been made in the concrete wall next to the fuse box which, according to the landlord, was where the tenant gained illegal access to hydro power. Fourthly, some of the carpet had been removed while other parts of the carpet remained but were stained with some sort of chemicals. Fifthly, the majority of the walls were covered in a heavy white plastic. Finally, a number of potted plants were scattered around the floors of the basement.
- ▶ The tenant was then asked to respond to the damages done to the rental unit. He agreed that he had caused quite a bit of damage to the rental unit, but was adamant that if the landlord had hired professionals, it wouldn't have cost them as much or taken as much time. In support of his argument, the tenant provided a work proposal from Romart Construction Ltd. While the proposal does not include an estimate for the time it would take the construction company to complete the job, the tenant testified that they told him they could do all of the work in under two weeks.
- ▶ With the exception of \$309.62 worth of entries the landlord provided receipts to substantiate his purchases of materials. As for his hourly charge of \$15.00 for both he and his co-landlord's time, I find this more than reasonable. However, the landlord failed to provide any third party estimates to compare to the amount of money and time he and his co-landlord spent to do repairs. The tenant, in the meantime, provided an estimate from a contracting company that lists the repairs required at an estimated total cost of \$9,097.20. Thus, based on the evidence and testimony provided, I find that compensation of no more than \$9,097.20 is justified. I thus award the landlord \$9,097.20 in compensation for damages caused by the tenant.

## Some Decisions indicating support of concerns

### ► **Manitoba - ORDER NO: 2009 – 024670A - Termination granted for violating no smoking rule**

The landlord filed a document entitled Waiver which the tenant signed on November 10, 2008 which stated as follows: "I, RP have agreed not to smoke inside my suite; 304 at \*\*\*\*\* or on the balcony and the grounds of the building during the length of my tenancy."

On August 17, 2009, the landlord gave the tenant a warning that he was in violation of section 73 of the Act due to smoking in his suite. A similar warning dated September 29, 2009, stated: "No smoking on property including parking lot. Tenant walks around common property smoking a cigarette @ 11:30 a.m./Sep 29/2009"

On December 17, 2009, the landlord served the tenant with a Notice of Termination by Landlord which stated: "Your Tenancy Agreement is terminated because of: Violation of tenancy agreement no smoking."  
It required the tenant to move out by January 31, 2010. The landlord testified that this was due to a further instance of smoking on the premises.

The landlord filed a note written by LZ which stated: "On Friday, January 27th, 2010, I received a rent payment by cheque from RP. After he paid and left the building, I saw him on the camera on my computer screen and observed him smoking a cigarette just outside of the front entry."

When it was time for the tenant to testify at the hearing, he refused to affirm or swear on the Bible. He did not give any reason for this refusal. The chair advised him that his evidence would not be taken unless he took an oath to tell the truth. He refused two more times and the chair then advised him that his evidence would not be heard.

There was no evidence to contradict that of the landlord.

Section 96(1) of the Act provides: Termination for causes other than failure to pay 96(1) A landlord may give the tenant a notice of termination if

...

(b) the tenant breaches a material term of the tenancy agreement and fails to remedy the breach within a reasonable time after receiving written notice to do so by the landlord; or ...

The panel finds that the Waiver signed by the tenant is a material term of the tenancy agreement. The tenant was given two written warnings which he disregarded. The landlord was entitled to terminate the tenancy as it did on December 17, 2010. The tenant has refused to move out so an Order of Possession is granted effective March 11, 2010 by 11:59 p.m.



# British Columbia

- ▶ June 2012 decision – RTB – BC – tenancy started April 21, 2012. In June 2012 they were called to building due to leak in suite below unit in question. Found jury rigged irrigation and ventilation systems for marijuana. Decision – tenancy ended immediately.
- ▶ January 2012 decision – Landlord indicated they lost a tenant due to the smell coming from next door's growing of marijuana. A number of points were raised – but in the end it was decided that the smell caused a disturbance and the tenant was ordered to leave.
- ▶ March 2012 – Landlord submitted statement from insurer that if tenant remained past April 29, 2012 their insurance would be suspended. This is due to marijuana growing. Also have proof that any damage due to growing would not be insured as of February 23, 2012 e-mail. Tenancy was terminated
- ▶ October 2012 – tenant had permit to grow 25 plants – though not specifically in the rental unit (per the landlord). Police seized 171 plants. Tenancy ended with proof of damage, disturbance, and illegal activity.

# What if we want to allow it

- ▶ There are companies out there like Leaf that may provide you some comfort.....



## What Plants Can I Grow With LEAF?

You can grow a variety of vegetables and herbs.....(no mention of marijuana)

## How do I change the water in LEAF?

In City mode you connect LEAF to your water and sewage and water is changed automatically. In Manual mode LEAF has a pump that dumps water into a bucket that you can remove easily. When you add new water to the bucket the pump sucks it in.

## Will My Home Smell of Marijuana?

No. LEAF will blow all the air from the grow area through its active carbon filter, will neutralize all smells. You must replace the carbon filter every 4-5 months to maintain effectiveness of smell prevention.

But at a cost...

## Pre-Order Your LEAF

at a price that may never be available again



### LEAF

**\$300 Deposit**  
(**\$2690 at Shipping**)

- Patent Pending Climate Control System
- Automatic Nutrient Dosing and pH Balancing
- BIOS LEDTM 200W Lighting System
- HD Camera For Remote Viewing and Timelapses
- Step by Step Video Instructions
- iOS and Android Mobile App
- Pesticide and Harmful Chemical Free
- Sync Grow Recipes From Community

### How Much Water Does Leaf Use?

LEAF uses about 5 gallons of water per week (almost 1,000 litres per year). That is not too bad – about \$10 in water per year.

### How Much Electricity Does LEAF use?

LEAF will use about \$15-\$50 per month dependent on how much the air system needs to work to heat/cool/dehumidify your grow area. That is up to \$600 a year in electricity.

This is not a photograph of



Questions?

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