



GrowingMarijuana.com

Marijuana And Rental Properties

Will Legalization Spread
Problems Like a Weed?

Presented to MNHPA

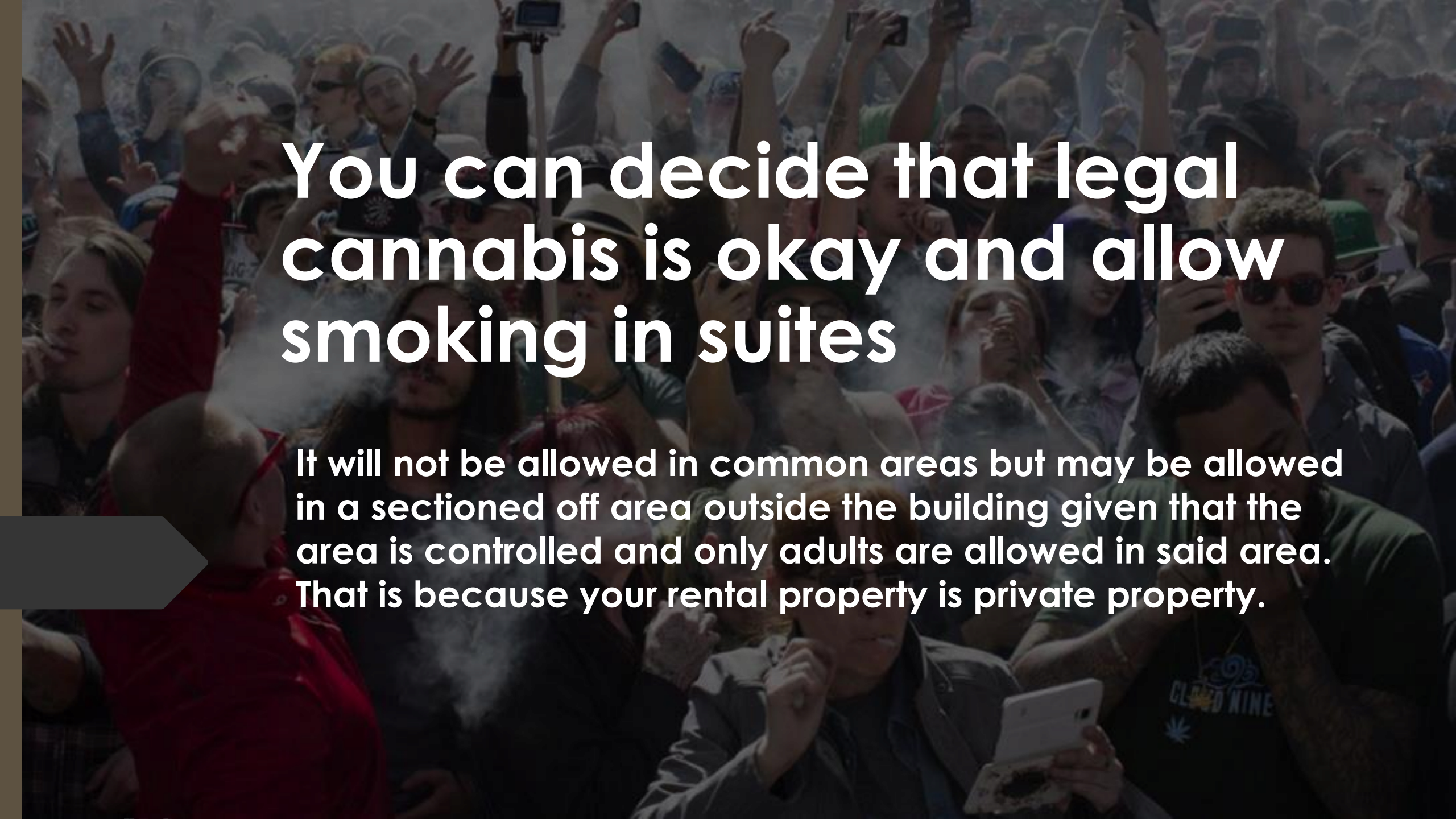
October 16, 2018

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Director of External Relations, Professional
Property Managers Association



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.

A large, dense crowd of people is shown from the chest up, filling the frame. Many individuals are holding up their smartphones high in the air, suggesting they are taking photos or videos of a performance. The crowd is diverse in age and appearance. The background is slightly blurred, emphasizing the people in the foreground. The overall atmosphere appears to be one of a high-energy event like a music festival or concert.

You can decide that legal cannabis is okay and allow smoking in suites

It will not be allowed in common areas but may be allowed in a sectioned off area outside the building given that the area is controlled and only adults are allowed in said area. That is because your rental property is private property.

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
 - ❖ At this time this is a non sequitur in that the Province has made growing illegal. This may become a problem if the Federal government pushes the fact that they allow it.
- No Smoking in suites
 - ❖ The Non Smokers Health Protection and Vapour Products Act has been 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 have a no business from your suite clause which is deemed a fair rule. That often does not cover selling Avon or something like that but they do not have customers visit them and sale of marijuana is only allowed from licensed stores.
- Special Tenant Insurance Requirement
 - ❖ If growing becomes legal we will position a request that it be treated like waterbeds and aquariums – due to the requirement for water supplies and high humidity – that would mean tenants would require insurance which covers the hazards associated with growing.

Province	Legal Age Alcohol/Cannabis	Supply System	Pot Lounges	Home Growing	Rental Units/Multiple Dwelling Unit	Legislation
ON	19 / 19	LCBO operation through subsidiary	No (under consideration)	Yes	no special rules, allowed to smoke in private residences	Bill 174, Cannabis Act 2017
QUE	18/ 18	Liquor board subsidiary (SQC)	N (smoking rooms under consideration for universities / hospitals)	No	no special rules, allowed to smoke in private residences	Bill 157
BC	19 / 19	Liquor board subsidiary + private stores	No (under consideration)	Yes	landlords and strata councils have right to ban growing and consumption	Bill 30
AB	18 / 18	Privately Run Stores licensed by Liquor board	Municipal discretion, lots of interest	Yes *	no special rules, allowed to smoke in private residences	Bill 26
SK	19 / 19	Privately Run Stores licensed by Liquor board	No	Yes *	Residential Tenancies Amendment Act 2017 Intro'd, LL could potentially ban use/growth	Bill 121
MB	18 / 19	4 private groups licensed by liquor board	No	No	no special rules, allowed to smoke in private residences	Bill 11
NS	19 / 19	Liquor Board	No	Yes	LL can ammend leases to ban use, 4 month notice period	Bill 108
NB	19 / 19	Liquor Board Subsidiary	No	Yes	Marjiuana kept at home has to be properly secured, no special rules for renters	Bill 16, Cannabis Control Act
NL	19 / 19	privately Run Stores licensed by Liquor board	No	Yes	no special rules, allowed to smoke in private residences	Liquor Corporation Act Ammendment
PEI	19 / 19	Liquor Board Subsidiary	No (possibly in future)	Yes	no special rules, allowed to smoke in private residences	Bill 29
YK	19 / 19	Liquor Board, maybe private retailers in future	No	Yes	LL choice to restrict smoking	Bill 15
NWT	19 / 19	Liquor Board	No	Yes	LL Choice to restrict for use and growing	Bill 6
NUN	19 / 19	Liquor Board through online sale	No (possibly in future)	yes	LL may restrict	Bill 7
* Can Be Restricted by Landlord						



Sample Policy Prohibiting Growing and Smoking Cannabis Based Products in Rental Accommodations

Due to concerns including damage to property, noxious smells, lasting odours, and possible health and other risks to tenants there will be:

- No growing of plants commonly known as Cannabis or Marijuana plants is allowed at our properties.*
- No smoking or vaping of Cannabis based products (including marijuana) is allowed at our properties*

Any breach of these rules will be considered a material breach in terms of the tenancy and as a result the Landlord will take any and all actions, including termination of tenancy.

Source – Kay Four Properties Inc.

Can a Property Manager support their reasonable rule of no

CBC | MENU

SPORTS Golden Knights' Nate Schmidt suspended 20 games for PEDs

NHL | Scores | Standings | Statistics | Teams | Players | Injuries | Transactions

Defenceman says he tested positive for 'microscopic amount' of subs
Stephen Whyno · The Associated Press · September 2



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Marijuana Use and Its Impact on Workplace Safety and Productivity

Despite the safety and productivity risks associated with marijuana use, the drug is increasingly seen as socially acceptable and its dangers may be marginalized.

0 10 hr
12 30 hr

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Woman's deadly cannabis allergy highlights complexity of condo living



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Second-hand 'toke' co workplace drug test: s



BUSINESS 11/30/2017 15:23 EST | Updated 11/30/2017 15:27 EST

Second-Hand Marijuana Smoke You Fail Drug Test: Study

THC is detectable in the body after 15 minutes of exposure, even if you're not smoking.

Canadian Press



CHRIS WATTIE / REUTERS

A man smokes marijuana during the annual 4/20 marijuana rally on Parliament Hill in Ottawa, April 20, 2017. Researchers in Calgary say employees should be aware they could fail workplace drug tests due to second-hand smoke from marijuana.

CALGARY — Researchers in Calgary say employees should be aware they could fail workplace drug tests due to second-hand smoke from marijuana.

Here are the details....

Canadian Medical Association Study Negative Effects of Second Hand Smoke

- CALGARY -- It looks like Canadian Olympic gold medalist snowboarder Ross Rebagliati may have been right all along.
- Rebagliati, the first Olympic gold medalist for Men's Snowboarding at the 1998 Winter Olympics, was initially disqualified after THC, the main ingredient in marijuana, was found in his system in a drug test.
- The decision was eventually overturned since cannabis wasn't a banned substance but Rebagliati maintained the positive drug test was the result of second-hand smoke.
- This study points to the Ross Rebagliati hypothesis -- there is a possibility that it is entirely possible to have THC levels within a non-smoker from just being exposed to smoke in a closed area," Fiona Clement, the principal author of the study published online in the Canadian Medical Association Journal Open, said Thursday.
- The study found THC is detectable in the body after as little as 15 minutes of exposure even if the person is not actively smoking it. Findings suggest anyone exposed to second-hand smoke in a poorly ventilated room including a kitchen, basement, or living room with the windows closed, will test positive.
- It can take between 24 and 48 hours for the THC to clear from the system and Clement said that could be particularly problematic for employees who work in jobs where there is a zero-tolerance drug policy.
- "Those who are not smoking can test positive in blood and urine tests for THC to levels that would lead to failing drug tests in certain areas depending on the limit that's adopted," Clement said.

<https://www.ctvnews.ca/health/second-hand-toke-could-lead-to-failure-of-workplace-drug-test-study-1.3701364>

Player Suspended Loss of job due to second hand exposure

- NHL Vegas Golden Knights defenceman Nate Schmidt will miss the first 20 games of the season after he was suspended for violating the NHL's performance-enhancing substances policy.
- "It is difficult to accept this suspension," Schmidt said Sunday in a lengthy statement. "I understand that I will miss these games, but I do not agree with the suspension and I will not accept being labelled a cheater."
- "It was utterly shocking to be informed that I tested positive for a microscopic amount of a tainted substance," Schmidt said. "Not only did I not intentionally take a banned substance, I could not have received any performance enhancement benefit from the trace amount that inadvertently got into my system at a level that was far too small to have any effect."
- The 27-year-old Schmidt said an expert in environmental contamination who testified on his behalf at the appeal hearing likened the amount of the banned substance to a pinch of salt in an Olympic-sized swimming pool. Schmidt said he only takes supplements given to him by his NHL team and has never tested positive before.
- "He would never risk his principles by taking performance-enhancing drugs," Keator said in a text message to The Associated Press. "There was no intentional use of a banned substance which is backed up scientifically."

<https://www.cbc.ca/sports/hockey/nhl/vegas-golden-knights-nate-schmidt-suspension-1.4808271>

And More Details...

Condo Owner Deathly Allergic to Marijuana Smoke

- A condominium corporation in Mississauga, Ont., is puzzling over how it can accommodate the conflicting medical needs of some residents as marijuana legalization looms.
- In April, the condo board of Applewood Place tried to pass a rule that would ban growing and smoking marijuana in the building's units and common areas. Condo owners eventually voted it down.
- This concerned resident Adele Schroder, 38, who, in her late teens, discovered she had a potentially deadly allergy to cannabis at a university party when people around her smoked up.
- "Now that it's becoming legal it's leaking into the hallways, getting into the ventilation system. I can't control my environment."
- So Schroder carries an EpiPen with her at all times, puts towels under the door, runs two air purifiers, never uses her balcony and largely avoids common areas except the laundry room. When she leaves the building, she said, she crosses the street at the first hint of the smell of pot.
- "There's a good chance I could go into anaphylaxis and it could be a life-threatening situation."

<https://www.cbc.ca/news/canada/toronto/deadly-allergy-cannabis-condo-1.4830526>

OSHA Study Link to Workplace Accidents

- The number of people using marijuana in the United States is rising rapidly, and the impact of this increase is showing up at work. Drug testing services report more positive tests for marijuana, both in pre-employment drug screens and drug tests conducted for other reasons.
- The penalty for a positive test is often a refusal to hire or, for those who are already employees, discipline up to and including termination. An employee familiar with state laws legalizing marijuana for medical and recreational use may be surprised by such a harsh workplace penalty, but employers continue to have good reasons for enforcing a strong substance abuse policy that includes a ban on marijuana.
- In May 2015, an article in the *Journal of Occupational and Environmental Medicine* concluded that there is a likely statistical association between illicit drug use, including marijuana, and workplace accidents. While some studies suggest that marijuana use may be reasonably safe in some controlled environments, its association with workplace accidents and injuries raises concern.

<https://ohsonline.com/articles/2016/02/01/marijuana-use-and-its-impact-on-workplace-safety-and-productivity.aspx>

Also – BC Supreme Court dismissed absolute right to smoke medicinal Marijuana

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. [...]

Earlier 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.

more 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.



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 a Tenant is growing and hiding it

- There are companies out there like Leaf that have products which may allow tenants to hide the growing of Cannabis



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.

Why worry – it is 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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