Cannabis: What are some of the practical issues for landlords on multi-residential properties?
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This note follows out of several public announcements, ARLA information sessions, and reflections on what is currently being proposed in some other provinces. The notes are those of a layman outsider, i.e., someone who has little or no experience in operating or managing multi-family properties. So, apologies to all readers who are not afflicted with those limitations. Feel free to move on to the next article; I won't be offended, and it will likely be a better read.

The following notes are no more than a random collection of ideas; so, no order of presentation will be evident herein.

Some time next summer the possession and recreational use of marijuana (cannabis) products ("pot") will become legal. Medicinal use is already available. Unless Alberta goes down the same road as Quebec in prohibiting growing pot in multi-housing, tenants will also be able to grow up to 4 marijuana plants on or in their premises. The Quebec solution is not likely to be followed in Alberta and may well be challenged in any event on a constitutional basis even in Quebec.

We are told, as well, that Alberta will not be following BC's lead in legislating against pot use in multi-housing; at least not for the moment.

So, if pot smoking and growing is a serious problem for residential landlords, it looks as though, as Heidi Besuijen notes, landlords will have to decide whether to solve the problem through lease contract terms.

Will that, in fact, happen on a broad basis in Alberta? The question is being asked in condominium contexts as well, as is noted in several media clips recently.

Some preliminary items to note in this regard include:

1. Information assembled by Service Alberta suggests that currently some 5% of Albertans are regular users of pot. So, 95% are not. If the experience in U.S. jurisdictions recurs in Alberta then, except for a brief spike in the legalization initiation period, the user pool will fall back down to the 5% percentage level. So, is continued use levels that equate to the current illegal use levels a great cause for concern? Maybe not; although I suspect that the 5% level may be low for the apartment rental environment. If the future post-blip period involves no material change in overall pot use, maybe it's not so big a deal.

2. Pot growing, on the other hand, is currently illegal and not likely to be done (currently) to the same level as pot use. Once legalized, however, the percentage of growers in apartments may well increase significantly. Therein lies a measurably increased risk. 4 plants in pots (the other kind

of pot) are not likely, I suspect, to require high levels of hydroponic action. But with grow lamps turned on for 16 hours a day, year-round, they are bound to have a negative impact on power costs (even assuming higher-level voltage is not required); and leaving on heat sources during prolonged periods of absence (while the tenant is at work and out partying after work) must raise fire safety risks. So, whatever one might say about the degree of concern, or lack of concern, over use; the degree of risk with growing is measurably higher. So, landlord prohibition of growing has a much plainer imperative than prohibition of use.

3. For landlords who currently have smoke-free buildings, the realities would not be the same, of course. It seems unlikely that a building of law-abiding non-smokers will suddenly face a high (or any) degree of pot-plant growing. The smoking prohibition in existing leases, however, might warrant review. If the lease already prohibits smoking, it will likely be treated as prohibiting pot smoking unless it refers to tobacco only. The smoking prohibition, however, may not treat vaping; so, some addition of language might be considered. Frankly, I don't know what the differences in impact are between smoking a joint and vaping a cannabis product. The BC government seems to treat them in the same vein; so, unless clearer knowledge of relevant distinctions come forward, I'd be inclined to treat them as the same. I suppose, but don't know, whether vaping may be more common with medical use; and if so there may be a human rights side-bar on that form of "smoking".

4. If current (or any) market conditions leave the landlord not disposed towards rendering his building smoke-free, that does not prevent him or her from legitimately banning pot use. After all, while tobacco smoking has odiferous and second-hand-smoke health consequences; if pot-smoking second-hand adds drug infusion risk to those same risks, surely there is in that circumstance a justification for excluding pot only. Particularly so in a building with children residents and particularly if growing is also expressly prohibited by the landlord.

5. I would guess that the percentage of persons who smoke tobacco is currently (and will continue in future to be) substantially higher than 5%. So, banning smoking is likely to adversely affect marketability more than banning only pot use.

A few other reflections to add are:

1. Banning growing is bound to be easier to enforce: you can see and touch the plants in a suite much more readily than you can see and identify an actual smoker in the act of smoking.

2. I suppose not all buildings are the same in terms of ventilation or freedom from smoke travel between apartments. That could be a relevant factor (either way, depending on the circumstances) in deciding on whether to adopt smoking prohibitions of any kind.

3. Further, if a landlord is heading down the trail of long-term de-modifying his building, maybe he should be clear with tenants who come in mid-stream that the landlord does <u>not</u> give any assurance that the building will ever be smoke-free and get tenants' written acceptance of that.

4. If a landlord elects to create and market a smoke-free building, he or she really needs to enforce the ban. Otherwise, it would seem to me, there is a real risk of good tenants suing the landlord for inaction. I expect people who go into an advertised smoke-free building choose to do so in part because of an expectation that it will in fact be smoke-free. Especially tenants suffering from ailments like asthma.

5. Lastly, a rule made is meaningless, is it not, if it cannot be or is not in fact enforced? So, Landlords should think carefully about what they will be able to do successfully in enforcement (see Heidi's cautions!) before adopting rules.

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