



Introduction and Overview of New Cannabis Legislation

Updated October 12th, 2018

On October 17th, 2018 federal legislation will come into effect to legalize cannabis in Canada. Accompanying this legislation, two Acts will come into force in BC that will regulate cannabis production, distribution, sale, and possession on a provincial level, as well as amend certain sections of the Residential Tenancy Act.¹ This policy document is intended to help non-profit housing providers navigate these legislative and social changes.

Once legalized, adults in BC who are **19 years or older** will be allowed to:

- possess up to 30 grams of legal dried cannabis or equivalent in non-dried form in a public place
- share up to 30 grams of legal cannabis with other adults
- purchase dried or fresh cannabis and cannabis oil from a provincially-licensed retailer
- grow up to 4 cannabis plants, up to a maximum height of 100cm, per residence for personal use from licensed seed or seedlings
- make cannabis products, such as food and drinks, at home provided that organic solvents are not used

In BC, adults will be prohibited from:

- smoking and vaping cannabis anywhere tobacco smoke and vaping are prohibited in public spaces

Implications of Cannabis Legalization for Non-Profit Housing Providers

While the new legislation legalizes the possession and personal cultivation of marijuana, this does not necessarily provide the right to smoke and grow cannabis in a rental unit. Once the legislation comes into effect, smoking cannabis will be treated in the same manner as cigarette smoking.

For non-profit housing providers that already include smoking clauses in their ongoing tenancy agreements, the change in legal status should be of no major consequence. The main notable change is that providers will no longer be able to evict a tenant for engaging in illegal activity related to marijuana possession and/or cultivation (within the limits provided above).

It is recommended, however, that providers review the definition of “smoking” in the tenancy agreement to ensure it specifies what constitutes smoking and/or vaping. See below for examples of how to word the smoking clause in tenancy agreements.

¹ The two Acts are the Cannabis Distribution Act found at: <https://www.leg.bc.ca/parliamentary-business/legislation-debates-proceedings/41st-parliament/3rd-session/bills/third-reading/gov31-3> and the Cannabis Control and Licensing Act found at: <https://www.leg.bc.ca/parliamentary-business/legislation-debates-proceedings/41st-parliament/3rd-session/bills/third-reading/gov30-3>

For non-profit housing providers that do not have smoking clauses in their existing tenancy agreements, and would like to prohibit smoking of cannabis, there are two options:

- 1) Wait until the current tenancy comes to an end and use a newly worded agreement for the next one. See below for new wording.
- 2) Attempt to obtain the tenant's consent to amend the agreement. Tenants are not required to accept the amendment.

If a housing provider currently allows smoking and would like to allow the smoking and vaping of cannabis, no action is required.

Examples of How to Word Smoking Clauses

The following examples provide guidance for how to word a non-smoking clause, as well as how to address personal cultivation.

Notwithstanding any other provision in this Agreement, and in addition to the obligations, rights and remedies set out herein:

Smoking

[a] Smoking is prohibited:

[1] in a Unit;

[2] on the interior common areas, including but not limited to in hallways, elevators, parking garages, electrical and mechanical rooms, stairs, storage locker areas;

[3] on patios and balconies;

[4] within 6 metres of a door, window or air intake; and

[5] within 25 metres of the playground area; and

in outdoor space designated as part of the rental unit for the exclusive use of the Tenant.

[b] "Smoking" shall include the inhaling, exhaling, burning or ordinary use of any tobacco, cannabis or product whose use generates smoke.

Vaping

[a] Vaping is prohibited:

[6] in a Unit;

[7] on the interior common areas, including but not limited to in hallways, elevators, parking garages, electrical and mechanical rooms, stairs, storage locker areas;

[8] on patios and balconies;

[9] within 6 metres of a door, window or air intake; and

[10] within 25 metres of the playground area; and

[11] in outdoor space designated as part of the Unit for the exclusive use of the Tenant.

[b] “Vaping” shall include the inhaling, exhaling, burning or ordinary use of any electrical or mechanical device to produce vapour or any other device that produces vapour for the primary purpose of inhaling, humidifiers excluded.

Allowing Smoking but not Cannabis Smoking

BC’s legislation allows for an amendment to the tenancy agreement only if there are currently no smoking restrictions in the leases. In this case, the existing no-smoking language extends to cannabis smoking. The legislation does not permit amendments to allow cigarette smoking but no cannabis smoking. If your tenancy agreement currently allows smoking but you would like to restrict the smoking of cannabis, it is suggested that you add a no-cannabis provision to *new* leases.

However, you should be advised that it will be very difficult to enforce this clause, as it will be very difficult to prove that a tenant was smoking cannabis as some cigarettes smell similar to cannabis.

Medical Cannabis Use

Legal counsel recommends against creating any policy or tenancy agreement amendment or clause for medical cannabis consumption. This is because the right to use medical cannabis where it is not permitted, is dealt with under the Human Rights Code. As such, there is a chain of events and obligations that have to occur between the user and the housing provider before the housing provider has to consider an accommodation for the person who needs to use medical cannabis in their living accommodation. Thus, legal counsel recommends that the issue of medical cannabis use be left alone and dealt with on a case by case basis.

Cultivation

If the non-profit landlord does not wish to allow for the production of cannabis plants, the following language is suggested:

The tenant shall not, nor shall the tenant’s family, guests or invitees grow or attempt to grow cannabis or cannabis plants as those terms are defined in the Federal Cannabis Act as it is from time to time, anywhere within the rental unit or on any common area exclusively used by the tenant or tenant’s family, such as balconies and patios, nor on any common area anywhere on the Development.

If the non-profit landlord wishes to allow for the production of cannabis plants, legal counsel recommends being silent on the issue, so no new language needs to be added to tenancy agreements.

Current Tenancy Agreements

Existing tenancy agreements are automatically deemed to have a restriction on the growing of cannabis. Tenancy agreements that are entered into **on and after October 17, 2018** must have a no grow clause or the new tenants can grow as per the legislation.

We appreciate the assistance of Grant Haddock of Haddock & Company, who helped with interpreting the new legislation and drafted the tenancy agreement wording provided above.

If you have further questions about how the legalization regime will affect your society, please contact Marika Albert, Policy Director by email at marika@bcnpha.ca or by phone at 778.945.2164.

For more information on the cannabis legalization regime in BC, see the following link:
<https://www2.gov.bc.ca/gov/content/safety/public-safety/cannabis/legalization>