



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards
Ministry of Housing and Social Development

Decision

Dispute Codes: ET

Introduction

This hearing dealt with an application by the landlord for an early end to tenancy and order of possession. The landlord testified that she served the tenant with the application for dispute resolution and notice of hearing by registered mail on September 12. The landlord further testified that on September 15, the mail delivery person attempted to deliver the registered mail to the landlord's residence, which is immediately above the rental unit, but the landlord directed the mail delivery person to the correct mail box and further witnessed that person knock on the tenant's door to attempt delivery and when unsuccessful, leave a notice of attempted delivery in the tenant's mailbox. I find that the tenant was properly served with the application for dispute resolution and notice of hearing.

Issue(s) to be Decided

Is the landlord entitled to end the tenancy early?

Background and Evidence

The landlord's undisputed testimony is as follows. The tenancy began in June 2008. The tenancy agreement stipulates that there is to be no smoking in the rental unit and that scented products could not be used in the rental unit. The addendum to the tenancy agreement specifically listed a number of products which should not be used in the rental unit, including Febreze. At the outset of the tenancy the landlord explained very clearly to the tenant that the landlord's son, whose room is immediately above the rental unit, was hyper-sensitive to cigarette smoke and fragrances and that smoking inside the rental unit and the use of scented products was strictly prohibited.

The landlord's residence shares central air conditioning with the rental unit and that

fragrances or smoke in the rental unit are circulated throughout the residential property. The landlord's son suffers from a medical condition in which cluster headaches are triggered by smoke and fragrances. The landlord's son further reacts to such odours with inflammation of the mouth, nose and eyes and because he is autistic, is unable to communicate his discomfort and will hit his face in an attempt to make his pain go away. The headaches suffered by the landlord's son tend to be cyclical and usually start in October. The landlord is hyper-vigilant in the fall with respect to protecting her son from these odours in an attempt to stop the cycle from beginning and has enjoyed some success in the past in that respect.

The landlord testified that the tenant has been smoking indoors and that despite repeated attempts by the landlord to convince her to stop, has continued both smoking and using Febreze in the rental unit. The landlord testified that she has seen a can of Febreze in the rental unit on two occasions.

Analysis

In order to be successful in her application, the landlord must prove not only that she has cause to end the tenancy, but that it would be unreasonable or unfair to wait for a one-month notice to end tenancy to take effect. I accept the landlord's undisputed testimony and find that the tenant has seriously jeopardized the health or safety of the landlord's son. I accept that the landlord has made numerous attempts to communicate the severity of the tenant's actions with the tenant, all to no avail and I find that it would be unfair to the landlord to force her to wait for a one-month notice to end tenancy to take effect.

Conclusion

I find that the landlord is entitled to an order of possession effective 2 days after service. The tenant must be served with the order of possession. If the tenant fails to comply with the order, it can be filed in the BC Supreme Court and enforced as an order of that court.

Dated September 19, 2008.

