

DECISION

Dispute Codes OPC, CNC, OPC, FF

Introduction

This hearing dealt with cross Applications for Dispute Resolution filed by both parties.

The Tenants filed their Application seeking an order to cancel a Notice to End Tenancy issued for cause, and for an order to have the Landlord comply with the Act.

The Landlord filed its Application for Dispute Resolution seeking an order to end the tenancy for cause, to have an order of possession and to recover the filing fee for the claim.

Both parties appeared, gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions to me.

Issues(s) to be Decided

Is the Notice to End Tenancy valid or should it be cancelled?

Are the Tenants entitled for an order to have the Landlord comply with the Act?

Background and Evidence

The Agent for the Landlord testified that initially the tenancy agreement entered into by the parties was between the Landlord, and the Tenant and his daughter. Shortly after the father and daughter Tenants moved into the rental unit, the son of the Tenant moved in and the daughter moved out.

Following the son moving in, the Landlord began to get complaints that there was marihuana smoke coming from the rental unit. The complaints came from other occupants of the residential property where the rental unit is located. The subject rental unit is located on the ground floor of this apartment building.

The Agent for the Landlord testified that in July of 2009, he gave the Tenants three warnings about the marihuana smoke coming from the unit. When the situation did not improve, the Agent issued the Tenants a Notice to End Tenancy, however, that was withdrawn by mutual agreement after the Tenants assured the Landlord that the marihuana smoke would no longer be a problem.

Shortly after this, the other occupants began to complain again about the smell of marihuana coming from the rental unit.

In evidence the Landlord provided letters from five other occupants who complain about the marihuana smoke emanating from the rental unit. These letters explain that the smell is in the foyer of the property, in the laundry room and enters into other units through balcony doors in warm weather, when the doors are open. There is also evidence in these letters that the majority of occupants in the building are seniors. One of the letter writers also alleged that a violent argument had been overheard between the Tenant and his son.

The Landlord issued the one month Notice to End Tenancy to the Tenants on August 7, 2009, with a stated effective date of September 7, 2009. I note the effective date indicated on the Notice is ineffective and automatically corrects under the Act to the last day of the month or September 30, 2009. I also note that the letters submitted in evidence are all dated in early to mid September of 2009. These indicate that the smell of marihuana smoke continued into September, well after the Notice to End Tenancy was issued.

In their evidence, the Tenants explain that there had never been any violent arguments between the Tenant and his son, contrary to the evidence in the letter.

The Tenants submit that the son of the Tenant has a mental illness and that the Notice to End Tenancy is discriminatory. They say the reasons for eviction are not valid or true.

The Tenants testified that while the son smokes marihuana, he now uses a vaporizer. The son testified that he purchased a vaporizer about a week before the hearing. He testified that his father prefers to use a pipe and that some odour may be escaping from that device. He explained his father only has an occasional puff of marihuana.

Analysis

Based on the foregoing, the evidence and testimony, and on a balance of probabilities, I find as follows:

I find that the one month Notice to End Tenancy is valid and it should not be cancelled.

Therefore, I dismiss the Application of the Tenants and allow the Application of the Landlord.

I find that the marihuana smoke coming from the rental unit has significantly interfered with and unreasonably disturbed other occupants in the property. The Tenants were given warnings and have failed to refrain from smoking marihuana in the rental unit.

As there was insufficient evidence about the alleged argument between the father and the son, I make no findings in regard to this issue. Furthermore, I do not find the Notice to End Tenancy had anything to do with the son of the Tenant having an alleged mental

illness. There was insufficient evidence on this issue given by either party to have any effect on the outcome of this hearing.

Having found in favour of the Landlord's Application, I grant the Landlord an order of possession for the rental unit.

After some discussion with the Tenants, the Agent for the Landlord agreed that the order of possession should be effective at **1:00 p.m. on October 31, 2009**. This order may be enforced in the Supreme Court of British Columbia.

I also order that the Tenants, and any persons allowed on the property by the Tenants, must not smoke marihuana in the rental unit or on the property of the Landlord. If this order is breached, the Landlord has leave to apply for an order to End the Tenancy Early and an **immediate** order of possession.

Lastly, the Landlord may retain \$50.00 from the security deposit held in compensation for the filing fee for the Application.

Conclusion

The Tenants' Application for Dispute Resolution is dismissed as the Notice to End Tenancy issued is valid and should be enforced.

The Landlord's Application is allowed and an order of possession is granted and issued.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: September 29, 2009.

Dispute Resolution Officer