



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes CNC

Introduction

This matter dealt with an application by the Tenant to cancel a One Month Notice to End Tenancy for Cause dated December 10, 2009.

Issues(s) to be Decided

1. Does the Landlord have grounds to end the tenancy?

Background and Evidence

This tenancy started in July 2009. The rental unit is a side by side duplex. The Tenant has a permit to grow marijuana. On or about August 24, 2009 the Landlord served the Tenant with a One Month Notice regarding his use of a shed on the rental property to grow marijuana. In a hearing held on October 7, 2009, the Dispute Resolution Officer found that the Landlord did not have grounds to enforce the One Month Notice but found that the Tenant was not entitled to use the shed (or common property) to grow his marijuana.

The Landlord's agents claimed that on September 10, 2009, they received an e-mail from the neighbouring tenant in the rental property complaining about the smell of marijuana coming from the Tenant's suite. The Landlord's agents said that after speaking to the Tenant about the smell, the Tenant moved his grow operation to the shed on the rental property without their consent. The Landlord's agents said that the neighbouring tenant subsequently advised them that the smell had dissipated. However, following the previous hearing on October 7, 2009, the Landlord's agents claimed that the Tenant moved the grow operation back into the rental unit.

The Landlord's agents said that on November 12, 2009 they got another written complaint from the neighbouring tenant in the rental property about the strong smell of marijuana coming from the Tenant's suite. The Landlord's agents said that they did an inspection of the rental unit on or about November 18, 2009 and confirmed that the Tenant was growing marijuana plants inside. The Landlord's agents said they gave the Tenant a written warning that he was disturbing another occupant of the rental property and that any further complaints about the smell would result in the tenancy ending.

In response to an e-mail from one of the Landlord's agents on December 11, 2009, the neighbouring tenant confirmed that the smell of marijuana was "still really bad" and he

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advised the Landlord that he would be ending the tenancy. Consequently on December 16, 2009, the Landlord served the Tenant with a One Month Notice to End Tenancy for Cause. The Notice to End Tenancy alleged the following grounds:

The Tenant or a person permitted on the rental property by the Tenant has:

- significantly interfered with or unreasonably disturbed another occupant or the landlord;
- put the Landlord's property at significant risk.

On January 6, 2010, the neighbouring tenant sent another e-mail to the Landlord confirming he was ending the tenancy in part due to the smell of marijuana. The Landlord's agents claimed that they were concerned about losing this tenant and also concerned that they would have similar difficulties with any new tenants who would subsequently occupy the neighbouring rental unit.

The Landlord's agents also argued that the Tenant's grow operation posed a risk to the Landlord's property. In particular, the Landlord's agents claimed that the wiring system used by the Tenant to power his grow lights required a permit but that he did not have one. The Landlord's agents admitted that they had not had the Tenant's wiring system inspected to determine if it posed a safety risk.

The Tenant argued that there was no safety risk posed to the rental property from his growing marijuana in the rental unit. The Tenant claimed that the wiring for the grow lights was put together by a certified electrician and that a permit was not required. The Tenant also claimed that the lights were all CSA approved. The Tenant further claimed that any excess moisture was removed with dehumidifiers.

The Tenant also claimed that he changed the ventilation in the rental unit at some time between December 26, 2009 and January 1, 2010. The Tenant said that he spoke to the neighbouring tenant on January 9, 2010 and he said that he could not smell anything. The Tenant also claimed that a plumber for the Landlord recently attended the rental unit and could not smell anything either.

Analysis

I find that the Landlord has provided no evidence that the Tenant's marijuana growing operation inside the rental unit has put the Landlord's property at risk let alone at *significant risk*. In particular, the Landlord's agents provided no evidence to corroborate their allegations that a permit was required to set up the lighting system and admitted that it had not been inspected by an electrician or building inspector to determine if there was a safety risk. Consequently, I find no merit to this ground on the Landlord's One Month Notice.

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With respect to the 2nd ground alleged on the Notice, I find that the Landlord received complaints from another occupant of the rental property on September 10, 2009 and November 12, 2009 that the strong odour from the Tenant's marijuana grow operation was disturbing him. I also find that the Landlord's agents gave the Tenant a written warning on November 18, 2009 that any further complaints about the smell would result in the tenancy being ended. I further find that the Tenant did not take any steps to adequately ventilate his marijuana grow operation until the end of December 2009 – after the other tenant in the rental property had given his notice that he was ending the tenancy.

Even if the Tenant has now resolved the ventilation issue in his rental unit as he claims, I find that his failure to deal with the smell from the marijuana grow operation within a reasonable time after he was given notice to do so was a major contributing factor in the landlord losing another tenant from the rental property. For this reason, I find that there is sufficient evidence to conclude that the Tenant has significantly interfered with the Landlord and unreasonably disturbed another occupant of the rental property. Consequently, the Tenant's application to cancel the One Month Notice is dismissed without leave to reapply.

The Landlord requested an Order of Possession to take effect 48 hours after service of it on the Tenant, however under s. 55 of the Act a Landlord may not end the tenancy earlier than the effective date of the One Month Notice. Consequently, I find that the Landlord is entitled to an Order of Possession pursuant to s. 55(1) of the Act to take effect at 1:00 p.m. on January 31, 2010.

Conclusion

The Tenant's application is dismissed. An Order of Possession to take effect on January 31, 2010 has been issued to the Landlord. A copy of the Order must be served on the Tenant and may be enforced in the Supreme Court of British Columbia.

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: January 26, 2010.

Dispute Resolution Officer