



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC and FF

Introduction

By application of January 30, 2012, the tenant sought to have set aside a one-month Notice to End Tenancy for cause dated January 28, 2012 and recovery of the filing fee for this proceeding.

Issue(s) to be Decided

This matter requires a decision on whether the Notice to End Tenancy should be upheld or set aside.

Background and Evidence

This tenancy began on April 1, 2011 under a one-year fixed term agreement set to end on April 1, 2012. Rent is \$1,000 per month and the landlord holds a security deposit of \$500 paid on March 31, 2011. The rental unit is a lower suite and the landlord and her children occupy the upper unit. The rental unit is shared by the tenant's brother.

During the hearing, the landlord gave evidence that the Notice to End Tenancy had been served because the tenant had breached a material term of the rental agreement, and adversely affected the quiet enjoyment and safety of other occupants by smoking in and adjacent to the rental unit.

The landlord said that tenant and his guests had smoked by cigarettes and marijuana in the rental unit and in the carport which was a breach of the no smoking term of the rental unit. In support of the outdoor smoking, the landlord submitted photographs of a wine bottle containing many butts, and showing several butts scattered on the ground.

The parties concurred that the tenant had acknowledged that he smoked at the beginning of the tenancy and that he was happy to be moving into a non-smoking unit as it would help him cut down.

The tenant acknowledge that he had used marijuana in the past, but only on the road, and that he had given it up as a New Year's resolution and in consideration of a possible drug testing program at his place of employment. He stated that neither he nor his guests had smoked in the rental unit, although the landlord gave evidence that she and a number of guests were aware of strong odours of cigarette and marijuana smoke wafting into her rental unit on many occasions.

The tenant stated that he believed the Notice to End Tenancy had been served in retaliation for a letter he had sent to the landlord on January 21, 2012 complaining of the sound of amplified guitar music and the sound of thumping emanating from her unit.

The landlord replied by letter of January 24, 2012, apologizing for the disturbance and noting that the amplifier had come into her home shortly after Christmas. She also explained that she had thumped on the floor when unwelcomed noise emanated from his unit and acknowledged that as an inappropriate method of communication. The letter pledged an ongoing effort to be attentive to the tenant's quiet enjoyment.

Among other issues, the letter also stated:

".....you agreed that there would not be any smoking in the suite or on my property.... This is a health concern and a breach of the agreement....you have assured me that it would not continue....I have repeatedly seen you and your guests...smoking in my carport. I ask you to discontinue any smoking and drugs in the suite, in the carport and/or on my property as per our original agreement."

The landlord stated that when she smelled a very strong odour of marijuana coming from the suite on January 28, 2012, it was the last straw, leading to the Notice to End Tenancy.

The landlord also stated that the tenant had breached the rental agreement by he and his guests parking on areas other than the two gravelled parking spaces designated for the tenant's use, including on the landlord's grass.

The landlord submitted into evidence a Craigslist posting with the subject line, "DO NOT RENT." The posting was discovered by her on February 13, 2012 and had been posted on January 29, 2012.

The landlord stated that the posting had greatly distressed her and her children as it contained her telephone number and address, information she would not include in her own ads.

The post contained a number of disparaging remarks about the rental unit including a reference to mould and three-inch brown recluse spiders, and referred to the landlord as a “wack job.”

The tenant denied having submitted the posting and suggested it may have come from the previous tenant who left nearly a year earlier.

However, I note that it contains a reference to the electric guitar that appeared only after Christmas 2011, states that the landlord served an eviction notice after the tenant had complained about the guitar, and states that the landlord had made comments about the author’s sex life, a complaint the tenant had raised in his submissions because the landlord had asked him to be aware that sounds from his bedroom could be heard by her and her children.

The landlord stated that Craigslist removed the posting on her request, and that it had helped to explain some curious incidents related to her attempts to rent the suite.

The landlord gave evidence that the tenant had, during a showing to a friend he thought was a prospective tenant, stated that a non-working light was probably the result of faulty wiring, that the top of the toilet tank was removed because of problems from the beginning of the tenancy, among other complaints that had never been referred to the landlord.

Analysis

Section 47(1)(h) of the *Act* provides that a landlord may serve a one month notice to end tenancy when a tenant has failed to correct a material breach of the rental agreement within a reasonable time of written notice.

I find as fact that the tenant continue to smoke permit guests to smoke marijuana in the rental unit after having been given written notice to do so.

Section 47(1)(e)(ii) provides for the one month notice in matters in which the tenant or his guests have engaged in an illegal activity that, “has adversely affected or is likely to adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant of the residential property...” I accept the evidence of the landlord that marijuana has been used in the rental unit and/or on the rental property.

In addition, section 47(1)(j) of the Act permits a landlord to end a tenancy in circumstances in which the tenant knowingly gives false information about the residential property to a prospective tenant or purchaser viewing the residential property. I find the tenant may well have done so during the tenant viewing in which the landlord stated he followed the landlord and the “prospective tenant” out of the rental unit stating that it would not be available until April 1, 2012 even though he had a Notice to End Tenancy effective February 29, 2012.

With respect to the Craigslist advertisement, I find that the tenant is, on the balance of probabilities, the author of the advertisement, and that it was a retaliatory act against the landlord for serving the Notice to End Tenancy.

Section 95 of the *Act* provides that:

- 2) A person who coerces, threatens, intimidates or harasses a tenant or landlord
 - (a) in order to deter the tenant or landlord from making an application under this Act, or
 - (b) in retaliation for seeking or obtaining a remedy under this Actcommits an offence and is liable on conviction to a fine of not more than \$5 000.

On balance, I found that the Notice to End Tenancy of January 28, 2012 was lawful and valid and declined to set it aside.

On hearing that determination, landlord requested an Order of Possession under section 55 of the *Act* which compels the issuance of the order when a tenant’s application to set aside a Notice to End Tenancy is dismissed and/or the notice is upheld.

Conclusion

The Notice to End Tenancy of January 28, 2012 is upheld.

The landlord's copy of this decision is accompanied by an Order of Possession, enforceable through the Supreme Court of British Columbia, to take effect at 1 p.m. on February 29, 2012.

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: February 17, 2012.

Residential Tenancy Branch