



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPC FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the Landlords to obtain an Order of Possession for Cause and to recover the cost of the filing fee from the Tenant for this application.

Service of the hearing documents, by the Landlords to the Tenant, was done in accordance with section 89 of the *Act*, sent via registered mail on February 15, 2012. Mail receipt numbers were provided in the Landlords' evidence. The Tenant is deemed to be served the hearing documents on February 20, 2012, the fifth day after they were mailed as per section 90(a) of the *Act*.

The parties appeared at the teleconference hearing, acknowledged receipt of evidence submitted by the other and gave affirmed testimony. During the hearing each party was given the opportunity to provide their evidence orally, respond to each other's testimony, and to provide closing remarks. A summary of the testimony is provided below and includes only that which is relevant to the matters before me.

Issue(s) to be Decided

1. Have the Landlords issued and served a valid 1 Month Notice to End the Tenancy in accordance with section 47 and 52 of the *Residential Tenancy Act* (the Act)?
2. If so, have the Landlords met the burden of proof to end this tenancy and obtain an Order of Possession?

Background and Evidence

The parties entered into a fixed term tenancy agreement that began on May 1, 2009 and switched to a month to month tenancy after April 30, 2010, for a rental unit that consists of the main floor of a house. Rent is payable on the first of each month in the amount of \$929.00 and on or before May 1, 2009 the Tenant paid \$450.00 as the security deposit.

The Landlord's Agent affirmed that when she attempted to rent out the lower suite in early January 2012 it came to her attention that there was an overwhelming marihuana smell coming from the main floor and that there was a cat inside the main floor unit. Their tenancy agreement does not allow for pets; therefore the Tenant is breaching a material term of their agreement. They referenced their evidence which included written statements from proposed tenants who came to view the lower suite and from the Landlords which all confirm the presence of either marihuana smoke and/or the cat.

The Landlord's Agent affirmed they had attended dispute resolution on January 4, 2012 at which time it was determined that they had served the Tenant with a warning letter and an eviction notice at the same time. As per the copy of the January 5, 2012 decision provided in their evidence, the Landlords' application was dismissed. In that decision the Dispute Resolution Officer wrote:

"The Tenant understands that if the presence of a cat or smoking marihuana on the property is verified by the Landlord in the future, the record of these events would form part of the Landlord's case should it again come before a dispute resolution officer for consideration".

The Landlord issued and personally served the Tenant a 1 Month Notice to End Tenancy (the Notice) on January 30, 2012 at 5:30 p.m.

The Tenant confirmed receipt of the Notice. She responded to the Agent's testimony by saying there is no cat in her unit and there has not been marihuana smoking in her unit since the previous hearing because her ex-spouse no longer lives at the rental unit. She confirmed she did not submit evidence in response to the Landlord's application. She argued the Landlord's evidence was the exact same photo they had used in the previous hearing and that they simply wrote a different date on it. She then began to attack the veracity of the Agent and Owners.

The Landlord's Agent noted that in the previous hearing the Tenant had assured that dispute resolution officer that the cat had been removed and the marihuana smoking had stopped. The Agent stated that she has seen the cat in the window herself, since the January 4, 2012 hearing, and when she was there the Tenant walked to the window, turned her back to her and walked away with the cat. Ever since then the Tenant has been keeping her drapes closed. The basement suite is currently vacant therefore the marihuana smell can only be coming from the upper unit.

The Landlords are seeking to end this tenancy in accordance with their Notice and requested an Order of Possession for as soon as possible.

Analysis

Upon review of the Notice to End Tenancy, I find the Notice to be completed in accordance with the requirements of section 52 of the Act and I find that it was served upon the Tenant in a manner that complies with section 88 of the Act.

The 1 Month Notice to End Tenancy cited the following reasons for issuance:

The tenant or a person permitted on the property by the tenant has:

- Significantly interfered with or unreasonably disturbed another occupant or the landlord

Tenant has engaged in illegal activity that has, or is likely to:

- jeopardize a lawful right or interest of another occupant or the landlord

Breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so

Tenant knowingly gave false information to prospective tenant or purchaser of the rental unit/site or property/park

Non-compliance with an order under the legislation within 30 days after the tenant received the order or the date in the order

I favor the evidence of the Landlords and their Agent, who provided affirmed testimony that they each have seen a cat in the window inside the Tenant's rental unit since the January 4, 2012 hearing; over the evidence of the Tenant who provided no evidence and resorted to name calling of the Landlords and their Agent. I favored the evidence of the Landlords over the Tenant, in part, because the Landlord's evidence included written statements from prospective tenants who came to view the basement suite and who had nothing to gain from providing their written statements. In my view the preponderance of consistent evidence submitted by the Landlords lends credibility to all of their evidence.

In *Bray Holdings Ltd. V. Black* BCSC 738, Victoria Registry, 001815, 3 May, 2000, the court quoted with approval the following from *Faryna v. Chorny* (1951-52), W.W.R. (N.S.) 171 (B.C.C.A.) at p. 174:

The credibility of interested witnesses, particularly in cases of conflict of evidence, cannot be gauged solely by the test of whether the personal demeanour of the particular witness carried conviction of the truth. The Test must reasonably subject his story to an examination of its consistency with the probabilities that surround the current existing conditions. In short, the real test of the truth of the story of a witness is such a case must be its harmony with the

preponderance of the probabilities of which a practical and informed person would readily recognize as reasonable in that place and in those conditions.

I find the Tenant's response to be improbable. Given that the evidence supports the basement suite is empty the marihuana smoke cannot be coming from another tenant. Furthermore the preponderance of evidence of a cat in the window on January 9, 2012, leaves the Tenant's explanation that the cat was given away, prior to the January 4, 2012 dispute resolution hearing, to be improbable. Rather, I find the Landlords' evidence that there continues to be marihuana smoking in the rental unit and there continues to be a cat inside the rental unit, to be plausible given the circumstances presented to me during the hearing.

For all the aforementioned reasons, I find on a balance of probabilities the following:

Section 47(1)(e)(ii) of the *Act* stipulates that a landlord may end a tenancy if the tenant or a person permitted on the property by the Tenant has engaged in illegal activity that has, or is likely to, adversely affect the quiet enjoyment, security, safety or well-being of another occupant.

The evidence supports that either the Tenant or someone allowed on the property by the Tenant is smoking marihuana in the rental unit. As the Tenant has not established that they are legally entitled to possess marihuana, I find that they engage in illegal activity when they smoke marihuana in the rental unit.

Residential Tenancy Branch guidelines suggest that the smoking of marihuana should not be grounds for ending a tenancy unless it has been established that smoking marihuana has had a significant impact on other occupants in the residential complex or on the landlord's property. I find this guideline to be reasonable.

I find that the Landlord has submitted insufficient evidence to show that the smoking of marihuana in the rental unit has adversely affected the quiet enjoyment, security, safety, or physical well-being of another occupant, as there are currently no other occupants. On this basis, I find that the Landlord does not have grounds to end this tenancy pursuant to section 47(1)(e)(ii) of the *Act*.

Section 47(1)(h) of the *Act* stipulates that a landlord may end a tenancy if the tenant has failed to comply with a material term, and has not corrected the situation within a reasonable time after the landlord gives written notice to do so.

The evidence proves the Tenant was previously notified of her breach of a material term, in writing and in the January 5, 2012 decision, and she continues to breach the tenancy agreement by having a cat inside the rental unit.

Based on the aforementioned I find the Landlord has met the requirements of section 47(1)(h) of the Act to end this tenancy due to a breach of a material term. Therefore I award the Landlord an Order of Possession.

The Landlord has been successful with their application; therefore I award recovery of the \$50.00 filing fee.

Conclusion

The Landlord's decision will be accompanied by an Order of Possession. This Order is legally binding and must be served upon the Tenant.

The Landlord may withhold the onetime award of the \$50.00 filing fee from the Tenant's security deposit.

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: March 01, 2012.

Residential Tenancy Branch