



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: CNC, OLC, FF

Introduction

This hearing concerns an application by the tenants for cancellation of a notice to end tenancy / an order instructing the landlord to comply with the Act, Regulation or tenancy agreement / and recovery of the filing fee. Both parties participated in the hearing and gave affirmed testimony.

Issue(s) to be Decided

Whether the tenants are entitled to any of the above under the Act, Regulation or tenancy agreement.

Background and Evidence

Pursuant to a written tenancy agreement, the fixed term of tenancy is from July 1, 2011 to June 30, 2012. Thereafter, the agreement provides that tenancy will continue on a month-to-month basis. Monthly rent of \$1,275.00 and parking of \$35.00 are both due and payable on the first day of each month. A security deposit of \$640.00 was collected. A move-in condition inspection report was completed with the participation of both parties.

The landlord issued a 1 month notice to end tenancy for cause dated May 10, 2012. The tenants filed an application to dispute the notice on May 14, 2012. A copy of the notice was submitted in evidence. The date shown on the notice by when the tenants must vacate the unit is June 30, 2012, and reasons shown on the notice for its issuance are as follows:

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

- significantly interfered with or unreasonably disturbed 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

In short, the notice was issued following complaints that smoke from the tenants' unit and / or balcony was creating a disturbance for other renters in the building. The position taken by the landlord is that, with the exception of a limited number of renters who have been "grandfathered," smoking is not permitted in the building, and that the no smoking provision is set out in the subject tenancy agreement.

In regard to smoking, clause # 43 on the tenancy agreement reads as follows:

43. **Smoking.** The tenant agrees to the following material term regarding smoking:

No smoking of any combustible material is permitted on the residential property, including within the rental unit.

Smoking of tobacco products only is limited to within the rental unit.

Smoking of tobacco products only is limited to the area described as _____ . **[this area is left blank]**

While none of the small boxes beside each of the above 3 sub-clauses is ticked, 2 larger boxes at the end of the list show one initialled by the landlord and the other initialled by the tenant.

Manual notations appear at Clause # 44 of the tenancy agreement, as follows:

44. **Other.** No smoking in building
No pets in building

During the hearing the parties exchanged views on some of the circumstances surrounding the dispute and undertook to achieve a resolution. Discussion included, but was not limited to, reference to provisions set out in section 14 of the Act which addresses **Changes to tenancy agreement**, and provides in part as follows:

14(2) A tenancy agreement may be amended to add, remove or change a term, other than a standard term, only if both the landlord and tenant agree to the amendment.

In summary, the parties noted the possibility that an amendment to the tenancy agreement might be a constructive means of clarifying the provisions around smoking as they presently exist in the tenancy agreement.

Analysis

The full text of the Act, Regulation, Residential Tenancy Policy Guidelines, Fact Sheets, forms and more can be accessed via the website: www.rto.gov.bc.ca

Section 63 of the Act speaks to **Opportunity to settle dispute**, and provides that the parties may attempt to settle their dispute during a hearing. Pursuant to this provision, discussion led to a resolution, and it was specifically agreed as follows:

RECORD OF SETTLEMENT

- that the notice to end tenancy will be set aside, such that the tenancy continues in full force and effect;
- that neither the tenant, his partner nor any of their guests will from this day forward smoke either in the unit, or on the balcony, or elsewhere in the building;
- that in future, should the landlord's witness be disturbed within her unit or on her balcony by second hand smoke, she will attempt to determine its source and then report her concern directly to the landlord's agent;
- that should the landlord's agent in future receive any such report, as above, she will undertake to follow-up directly and in a timely fashion with the renter whose unit or balcony appears to be the source of the smoke;
- that the tenants will recover half the filing fee by way of withholding \$25.00 from the next regular payment of monthly rent.

Conclusion

The notice to end tenancy is hereby set aside, and the tenancy continues uninterrupted.

The tenants may withhold \$25.00 from the next regular payment of monthly rent in order to recover half the filing fee.

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: May 31, 2012.

Residential Tenancy Branch