



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute codes

CNC

Introduction

This hearing was convened in response to an application filed on December 06, 2012 by the tenant to cancel a 1 Month Notice to End Tenancy for Cause (the Notice to End) dated July 04, 2012, with the reasons as:

Tenant or person permitted on the property by the tenant has;

- *significantly interfered with or unreasonably disturbed another occupant or the landlord.*
- *seriously jeopardized the health or safety or lawful right of another occupant or the landlord.*
- *put the landlord's property at significant risk.*

For this type of application, the onus is on the landlord to prove the Notice to End was issued for sufficient reasons, and that at least *one reason* must constitute sufficient cause for the Notice to be valid. The landlord is not required to prove all reasons stipulated for ending the tenancy

Both the tenant and the landlord appeared in the conference call and each participated in the hearing via submissions and their testimony.

At the outset of the hearing the landlord orally requested an Order of Possession.

Issue(s) to be decided

Is there *sufficient* cause to end the tenancy?

Is the landlord entitled to an Order of Possession?

Background and evidence

This tenancy began July 01, 2012 as a verbal tenancy. The 2 tenants occupy the lower portion of the residential house and the landlord occupies the upper portion. The tenancy agreement is that the rent is \$700.00 per month payable in advance. The

parties agree that the rent amount includes basic cable service and the use of laundry facilities by the tenants. It must be noted the parties agree that the tenants were told that smoking was only permitted on the residential property *outside* of the rental unit as second hand smoke was injurious to the landlord's health and the occupants with the landlord.

The landlord claims the tenant was given the Notice to End November 01, 2012 although it was dated July 04, 2012, for reasons unknown to the landlord. The tenant testified and submitted they received the Notice to End November 27, 2012. Along with this anomaly, the tenant submits the Notice to End did not contain the tenant's last name and that the landlord used '*white-out*' on the form and the landlord's signature is suspect – which the tenant argued makes the Notice invalid to end the tenancy.

None the less, the landlord testified that their reasons for wanting to end the tenancy were that the tenant smokes in the rental unit and that the smoke enters the landlord's upper unit and disturbs the landlord and is injurious to them. The landlord claims this is the paramount reason for wanting to end the tenancy. In addition, the landlord claims the tenant has not paid all of the rent in the past 90 days but this is a secondary matter for the landlord. The landlord claims the tenant allows non-residents to use the laundry facilities, and the tenant incurs additional costs to the television cable service (movie rentals). The tenant testified that they received advice not to pay all the rent and has not done so, but understands the advice was not prudent. The tenant did not dispute allowing others to use the laundry. The tenant testified they have paid a quantum toward some of the extra cable charges and understand such charges are the tenant's responsibility. The tenant agrees that a condition of the tenancy is that they must not smoke inside their rental unit / indoors, but that they have not always smoked outside of the rental unit and have smoked inside the unit.

Analysis

I accept the tenant's testimony that in the least they received the Notice to End within November 2012. I find that the unexplained date on the Notice to End, the lack of a last name for the tenant, and the other issues identified by the tenant, while inconsistent with a proper completed Notice to End do not fatally impact the tenant's rights. I find the tenant was not misled by the improperly completed Notice, and successfully was able to dispute the Notice in the prescribed time to do so, and in general does not prejudice the tenant's case. I find the landlord's Notice to End, as given, is not invalid so as to cancel the Notice. Therefore, this matter must be determined on the merits of the landlord's reasons for wanting to end the tenancy. I find the testimony of the tenant and the landlord, clearly, is that the tenant breached a term of the tenancy agreement by

smoking in the rental unit. I find that the tenant knowingly smoked in the unit contrary to the tenancy agreement, and in so doing unreasonably disturbed the landlord.

On the preponderance of the evidence and testimony provided, and on the balance of probabilities I accept the landlord's testimony and find the landlord has met the burden of proof in showing he had *sufficient* cause to end this tenancy on the basis the tenant : *Significantly interfered with or unreasonably disturbed another occupant or the landlord and seriously jeopardized the health or safety or lawful right of another occupant or the landlord.*

Therefore, I uphold the landlord's Notice to End and the tenant's application to cancel the landlord's Notice to End is **dismissed** without leave to reapply. The landlord is hereby entitled to an **Order of Possession** as requested.

Section 55 of the Act, in part, states as follows: emphasis mine.

Order of possession for the landlord

55 (1) If a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, the director must grant an order of possession of the rental unit to the landlord if, at the time scheduled for the hearing,

(a) the landlord makes an oral request for an order of possession, and

(b) the director dismisses the tenant's application or upholds the landlord's notice.

(3) The director may grant an order of possession before or after the date when a tenant is required to vacate a rental unit, and the order takes effect on the date specified in the order.

Conclusion

The tenant's application is **dismissed**. I **Order** the tenancy will end. I grant an **Order of Possession** to the landlord effective **Thursday, January 31, 2013**.

If the landlord determines to end the tenancy, this **Order** must be served on the tenant. Should the tenant then fail to comply with the Order, the Order may be filed in the Supreme Court of British Columbia and enforced as an order of that Court.

This Decision is final and binding on both parties.

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 15, 2013

Residential Tenancy Branch

