



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding British Columbia Housing Management Commission
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC, OPC, FF

Introduction

There are applications filed by both parties. The Tenant has applied for an order to cancel the notice to end tenancy issued for cause. The Landlord has made an application for an order of possession and recovery of the filing fee.

Both parties attended the hearing by conference call and gave testimony. The Tenant has clarified at the beginning of the hearing that she abandoned her application and has not served the Landlord with her application. The Landlord has confirmed not receiving the notice in her direct testimony. The Landlord states that her Application was filed on March 21, 2013 and received a hearing date that was cross referenced to the Tenant's as both matters referred to the Landlord's notice to end tenancy dated February 27, 2013. The Tenant states that she only just received the Landlord's Notice of a Dispute Resolution Hearing on the morning of the hearing date. The Tenant's Application to cancel a notice to end tenancy is dismissed with leave to reapply as the notice was never served upon the Landlord. Leave to reapply is not an extension of any applicable limitation period. The hearing shall proceed on the Landlord's Application as I find that the Tenant was properly served. The Tenant was given time to submit any documentary evidence required to respond to the Landlord's Application after the hearing.

Issue(s) to be Decided

Is the Landlord entitled to an order of possession?

Is the Landlord entitled to a monetary order for recovery of the filing fee?

Background and Evidence

Both parties agreed that the Landlord personally served the Tenant with a 1 month notice to end tenancy issued for cause dated February 27, 2013 on February 27, 2013. The notice displays an effective date of March 31, 2013 and the stated reason of "Tenant has engaged in illegal activity that has, or is likely to adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant or the landlord."

The Landlord states that several written complaints have been received by other Tenants reporting questionable behaviour that breach the crime free housing agreement signed by all tenants. The Landlord states that it has been reported that the Tenants smoke marijuana and that the smell is quite strong and distinctive that bother anyone that walks by their doorway or the neighbors with bordering walls. The Landlord's letters of complaint also state that the Tenant, her daughter or guests have unduly disturbed the other occupants of the rental building by breaching the CFHA.

The Tenant disputes the Landlord's notice and states that she was given written permission to smoke in her rental unit. The Tenant has submitted a letter from the Landlord's Agent, B.C. a Building Manager Supervisor dated October 24, 2012. It states, "I am sending this letter to you to clear up some possible outstanding issues regarding your tenancy.....2. Due to continuing complaints -Pot smoking is to be done inside the privacy of your own unit and not outside areas of BC Housing....These conditions form part of your tenancy agreement...."

The Landlord has confirmed that the letter was sent to the Tenant by a representative of the Landlord, but argues that this representative overstepped his authority.

Analysis

I find based upon the undisputed testimony of both parties that the Tenant was properly served with the notice to end tenancy dated February 27, 2013. I also find based upon the undisputed testimony of both parties that the Landlord's representative gave permission to the Tenant to smoke inside the rental unit. The Landlord's Application for an order of possession is dismissed. The notice to end tenancy dated February 27, 2013 is set aside and the Tenancy shall continue.

Conclusion

The Landlord's Application is dismissed.

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: April 09, 2013

Residential Tenancy Branch

