



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: CNC OPC FF O

Introduction

This hearing dealt with an application by the tenant pursuant to the Residential Tenancy Act (the Act) for orders as follows:

- a) To cancel a notice to end tenancy for cause pursuant to section 47; and
- b) To recover the filing fee for this application.

Service:

The Notice to End Tenancy is dated April 26, 2014 to be effective May 31, 2014 and the tenant confirmed it was served by posting it on his door. The tenant /applicant gave evidence that they served the Application for Dispute Resolution by registered mail and the landlord acknowledged receipt. I find the documents were legally served for the purposes of this hearing.

Issue(s) to be Decided:

Has the landlord proved on the balance of probabilities that there is sufficient cause to end the tenancy or is the tenant entitled to any relief and/or to recover his filing fee? Is the landlord entitled to an Order of Possession if the tenant is unsuccessful in the application?

Background and Evidence

Both parties attended the hearing and were given opportunity to be heard, to provide evidence and to make submissions. The undisputed evidence is that the tenancy commenced November 1, 2013 for a fixed term expiring October 31, 2014. Rent is \$1500 a month and a security deposit of \$750 was paid in November 2013. The landlord served a Notice to End Tenancy for the following reasons:

- a) The tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord;
- b) The tenant or persons invited on the property by him have seriously jeopardized the health and safety of other occupants or the landlord;

c) The tenant has engaged in illegal activity that adversely affects the quiet enjoyment, security, safety or physical wellbeing of another occupant or the landlord, and damages the landlord's property and jeopardizes others' lawful rights and interests.

The landlord agreed that the main problem was the tenant and/or his guests smoking marijuana just outside and inside the unit and also smoking cigarettes. He provided three letters from other occupants in evidence complaining of the tenant's cigarette and/or marijuana smoke interfering with their reasonable enjoyment and seriously jeopardizing their health. One witness said he has lived in the end unit which is next to the tenant's townhouse for 15-20 years and he has an allergy to smoke; he said the smoke is filtering into his unit from the tenant's unit and causing him significant distress. The strata manager testified that she has received about 16 complaints on the smoking issue and on three occasions when she knocked on the tenant's door to discuss other matters, there was a strong marijuana smell and lots of smoke.

The tenant states that the Notice should be set aside because his girlfriend has a license to use medical marijuana so it is not an illegal activity. He said he has done many things to mitigate the problem. He had his girlfriend smoke outside, then in the garage and when there still were complaints, he had her smoke in the master bathroom with the vents operating. He thought the problem was solved. He pointed out that the landlord visited his unit about 2 hours after the strata manager and he does not recall a smoke issue.

The landlord said that it was several hours after the strata manager's visit and he could still smell smoke in the unit but did not actually see smoke. This was just prior to his issuing the Notice to End Tenancy to the tenant. The landlord pointed out that the tenant signed a lease with an express 'No Smoking' provision and he has constantly breached the agreement. He requests an Order of Possession. After some discussion of the issues, the parties agreed to settle on a Possession effective June 26, 2014 as the tenant is travelling.

Included with the evidence is a copy of the Notice to End Tenancy, the lease agreement with a No Smoking provision saying "Non-Smoking Residence", photographs of cigarette and other butts in the garage, a letter from the Strata Council and three letters from tenants.

On the basis of the documentary and solemnly sworn evidence presented for the hearing, a decision has been reached.

.

Analysis:

As discussed with the parties in the hearing, the onus is on the landlord to prove on a balance of probabilities that they have good cause to evict the tenant.

I find the evidence of the landlord credible and I prefer it to the evidence of the tenant in respect to the causes cited, namely, that he or a person permitted on the property by him, has significantly interfered with or unreasonably disturbed another occupant or the landlord. The two witnesses and three tenants in their letters support the landlord's oral sworn testimony that this tenant and/or his guests smoke inside, outside or in the garage of the unit and this significantly interferes with their enjoyment and puts their safety and health at risk. I find the tenant's evidence supports the landlord's evidence that he or his guests are smoking inside or right outside the unit. Although the tenant contends he has done everything in his power to mitigate any damage or interference with others and his girlfriend's use of marijuana is not illegal as she has a medical license, I find he has breached the lease and the smoking has significantly interfered with other owners or tenants of this townhouse complex.

For all of the above reasons, I dismiss the application of the tenant to cancel the Notice to End Tenancy. I find the tenancy is terminated on May 31, 2014. As requested by the landlord in the hearing, I issue an Order of Possession pursuant to section 55 of the Act. As agreed by the parties, an Order of Possession is issued effective June 26, 2014.

Conclusion:

The Application of the Tenant to set aside the Notice to End Tenancy is dismissed. The tenancy is at an end on May 31, 2014. An Order of Possession is issued to the landlord effective June 26, 2014. I find the tenant not entitled to recover the filing fee for his application as he was unsuccessful.

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: June 18, 2014

Residential Tenancy Branch

