



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding GREATER VICTORIA HOUSING SOCIETY
and [tenant name suppressed to protect privacy]

Decision

Dispute Codes:

CNC, FF

Introduction

This Application for Dispute Resolution by the tenant was seeking to cancel a One-Month Notice to End Tenancy for Cause dated June 23, 2014 to terminate the tenancy effective July 31, 2014.

Both parties were present at the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained. The participants had an opportunity to submit documentary evidence prior to this hearing, and the evidence has been reviewed. The parties were also permitted to present affirmed oral testimony and to make submissions during the hearing. I have considered all of the affirmed testimony and relevant evidence that was properly served.

Issue(s) to be Decided

Should the One Month Notice to End Tenancy for Cause be cancelled?

Background and Evidence

The tenancy began on June 1, 2014 with rent of \$1,155.00. A security deposit of \$577.50 was paid. The parties signed a written tenancy agreement, a copy of which was placed in evidence.

One-Month Notice to Notice to End Tenancy for Cause, a copy of which was submitted into evidence, indicated that there was a:

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

The landlord testified that smoking of anywhere in the complex is prohibited under a specific term in the tenancy agreement, as excerpted below:

“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.”

The landlord testified that they received written complaints from one other resident who reported smelling marijuana emanating from the tenant's unit. The landlord pointed out that there are only two occupied units in the area in question. Copies of the complaint letters were in evidence and the landlord was prepared to call this individual as a witness to confirm the complaints.

The tenant denied that they or others on their property were smoking cannabis or tobacco in the unit. However, the tenant acknowledged that some guests were using scented vaporizers on one occasion under the belief that this activity was not considered to be “smoking”.

The tenant testified that they never received any written notice or cautions from the landlord with respect to this alleged violation and suddenly received a One-Month Notice to End Tenancy for Cause.

The tenant's position is that they were not given a reasonable opportunity to correct the situation because the landlord immediately issued the One-Month Notice to End Tenancy for Cause without affording written warnings.

The tenant pointed out that, they now understand that the term in the tenancy agreement against smoking combustibles also includes a prohibition against the use of vaporizers within the unit and the complex.

The tenant feels that the One-Month Notice to End Tenancy for Cause is not valid and is requesting that it be cancelled

Analysis

The burden of proof is on the landlord to justify the 1-Month Notice.

Section 6 of the Act states that the rights, obligations and prohibitions established under the Act and the terms agreed to in a tenancy agreement are both enforceable through dispute resolution. Section 58 of the Act also states that a person may make an application for dispute resolution in relation to disputes over: (a) rights, obligations and prohibitions **under the Act**; (b) rights and obligations **under the terms of a tenancy agreement** that:

- (i) are required or prohibited under this Act, or
- (ii) relate to the tenant's use, occupation or maintenance of the rental unit, or common areas or services or facilities.

I find that the issue before me relates to an alleged breach of a term in the tenancy agreement prohibiting smoking on the premises.

I find that that, in order to end a tenancy on that basis under section 47(1)(h) the landlord must be prepared to prove that the tenant

- (i) has failed to comply with a material term, and
- (ii) has not corrected the situation within a reasonable time after the landlord gives written notice to do so (My emphasis)

I accept the landlord's testimony and evidence that the prohibition on smoking would constitute a material term of this tenancy agreement.

I further accept that the landlord received complaints from another resident living nearby in the complex about odours coming from the tenant's unit. For this reason, I find that there is no need to hear from the witness

I find that the testimony of both parties confirms that the tenant's guests did engage in using vaporizers and that this activity could be seen as falling under the category of "*smoking of any combustible material*" that is referred to in the tenancy agreement.

However, I find that the landlord neglected to issue a written notice demanding that the tenant correct the situation, as required under section 47(1)(h)(i) of the Act, nor did the landlord give the tenant a reasonable amount of time to do so before the landlord attempted to end the tenancy through a One Month Notice to End Tenancy for Cause.

In any case, I find that the tenant has adequately corrected the situation and did so within a reasonable time after they became aware of the transgression. I find that the tenant understands and agrees that the prohibition on smoking, referred to in the tenancy agreement, also encompasses the use of personal vaporizers. The tenant has confirmed that they are aware that further transgressions of this nature will place their tenancy in jeopardy.

Given the above, I therefore find that there is not sufficient cause to end this tenancy based on the evidence and I find that the One-Month Notice to End Tenancy should be cancelled.

I hereby order that the landlord's One-Month Notice to End Tenancy for Cause dated June 20, 2014 is permanently cancelled and of no force nor effect.

The tenant is entitled to be reimbursed the \$50.00 cost of this application and is ordered to reduce the next payment of rent owed to the landlord by \$50.00 as a one-time abatement to recoup the cost.

Conclusion

The tenant is successful in the application to cancel the landlord's One-Month Notice to End Tenancy for Cause.

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: August 19, 2014

Residential Tenancy Branch

