



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

Landlord's application: OPC; OPB; FF

Tenant's application: CNC

Introduction

This Hearing was convened to consider cross applications. The Landlord seeks an Order of Possession; and to recover the cost of the filing fee from the Tenant.

The Tenant seeks to cancel a Notice to End Tenancy for Cause issued June 28, 2014 (the "Notice").

The Hearing process was explained and the participants were asked if they had any questions. The parties and the Landlord's witnesses gave affirmed testimony at the Hearing. The parties were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions to me.

The parties' witnesses were excluded from the Hearing until it was their turn to give evidence. It is important to note that the Tenant objected to the witnesses being isolated from the Hearing and I explained that this was normal procedure. I also explained that when a tenant seeks to cancel a notice to end tenancy, it is a reverse onus situation. That is to say, the onus is on the Landlord to provide sufficient evidence to end the tenancy for the reasons outlined in the notice to end tenancy. Therefore, the Landlord gave her evidence first.

It is also important to note that the Tenant's witness left the call at about 30 minutes into the call. He signed back in immediately and was verbally abusive about waiting to give his testimony. He also complained that he was missing work and that the Hearing was rigged in favour of the Landlord. I cautioned the Tenant's witness with respect to his behaviour, and explained that witnesses are expected to remain available for the duration of the Hearing, which normally is about an hour. I placed him back on "hold" and he immediately signed back out again. Because of his disruptive behaviour, and further to the provisions of Rule 8.7 of the Rules of Procedure, I excluded him from the Hearing.

It was determined that each party served the other with their Notice of Hearing documents and copies of their documentary evidence.

Issues to be Decided

- Is the Notice a valid notice to end the tenancy?

Background and Evidence

The rental unit is the basement suite of a house. The Landlord and her family live on the main floor. On April 1, 2014, the parties signed a one year lease, a copy of which was provided in evidence. Utilities are not included in the rent and are shared 50/50 with the Landlord. Monthly rent is \$1,250.00, due on the first day of each month. The Tenant paid a security deposit in the amount of \$625.00 on March 4, 2014.

The Landlord served the Tenant with the Notice on June 28, 2014, by hand delivering the Notice to the Tenant at the rental unit.

The Landlord and her witnesses gave the following testimony:

The Landlord testified that the rental property is strictly a non-smoking property, and that the advertisement and the tenancy agreement both indicate that there is no smoking allowed. The Landlord stated that the Tenant's son is smoking marijuana at the rental property and that the smell is drifting into her living space. She stated that she was particularly concerned because she has a small child.

The Landlord testified that the Tenant plays loud music in the early hours of the morning, which disturbs her family's rest. The Landlord gave specific dates and times of noise occurrences. She stated that her neighbours have also complained about the noise and the marijuana smell.

The Landlord testified that on May 9, 2014, she sent the Tenant a text advising that the Tenant's noisiness kept her family up. On June 20, 2014, the Tenant had friends over. She stated that they were playing loud music and making banging noises in the middle of the night, so the Landlord wrote the Tenant a warning letter on June 21, 2014. The Landlord provided a copy of the May 9 text and the June 21 letter in evidence.

The Landlord's witness BW testified that he "frequently smelled marijuana" at the rental property, about 3 or 4 times a week. He testified that the Tenant and her guests play loud music late at night, which he can also hear. BW stated that on June 21 at 3:00 a.m. and June 28, 2014, at 2:00 a.m., he was woken by the Tenant's loud music. He testified that he witnessed the Tenant's son smoking. It is important to note that I asked the Tenant if she had any questions for the witness and she stated that she could not hear his testimony. I clarified his testimony for the Tenant. The Tenant asked the witness how he knew the smell was marijuana and he replied that he has smelled it before.

The Landlord's witness HH lives with the Landlord in the rental property. He stated that the Tenant's son smokes marijuana "every day". HH stated that on May 9, June 20, June 28 and July 19, 2014, the Tenant kept him awake with loud music and noise between 1:00 a.m. and 3:00 a.m. He stated that he spoke to the Tenant and told her his concern for the health of the baby and also that the lack of sleep was affecting his work.

The Landlord's witness AN stated that she is a friend of the Landlord's. She stated that on July 11, 2014, at 10:00 she was visiting the Landlord and detected the skunk-like smell of marijuana in the Landlord's suite. AN stated that it was coming from the basement suite, because she could smell it most when she walked past a register in the floor.

The Tenant gave the following testimony:

The Tenant stated that she was overwhelmed by the volume of evidence and documents given by the Landlord. She said that all of the appliances in the rental unit need to be fixed and that the Landlord wants her to pay for the repairs. The Tenant stated that she thinks the Landlord and the neighbours collaborated to make up a story to get rid of her because she complained.

The Tenant stated that she wasn't aware that her son was smoking. She testified that she asked him if he smoked and he said he wasn't.

The Tenant stated that she and her family "smudge" and that it was part of their tradition. I asked her what it meant to smudge and she replied that it was a ceremonial cleansing done with sage and other herbs. The herbs are lit and the resulting smoke is brushed on the person's body with a feather. The Tenant believes that this may be what the Landlord and her witnesses believe to be the smell of marijuana.

The Tenant testified that the Landlords are not giving her any privacy, and that they watch her every movement and come into the rental unit without proper notice.

Analysis

I find that the Notice complies with the requirements of Section 52 of the Act. The Notice alleges the following reason for ending the tenancy:

- 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.

Did the Tenant breach a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so?

In order to support this reason to end the tenancy, the Landlord must provide sufficient evidence that the Tenant:

1. breached a **material term** of the tenancy agreement; and
2. that the breach was not corrected within a reasonable time after **written notice** to do so.

Residential Tenancy Policy Guideline 8 provides, in part:

“A material term is a term that the parties both agree is so important that the most trivial breach of that term gives the other party the right to end the agreement.

To end a tenancy agreement for breach of a material term the party alleging a breach – whether landlord or tenant – must inform the other party in writing:

- that there is a problem;
- that they believe the problem is a breach of a material term of the tenancy agreement;
- that the problem must be fixed by a deadline included in the letter, and that the deadline be reasonable; and
- that if the problem is not fixed by the deadline, the party will end the tenancy.”

I find that the “no smoking” clause in the tenancy agreement is a material term; however, the warning letter does not indicate that the Landlord would end the tenancy if the problem was not fixed by a certain deadline. It states that “Further violations of your lease **could eventually** lead to termination of your tenancy agreement”. [my emphasis added].

For these reasons, I find that the Landlord has not provided sufficient evidence that the tenancy should end for the second reason provided on the Notice.

Has the Tenant or a person permitted on the property by the Tenant significantly interfered with or unreasonably disturbed **another occupant** or the Landlord

The Landlord provided written evidence and oral testimony from neighbours. I explained to the parties that neighbours do not fit in the definition of “another occupant”. However, I do accept the witness’s evidence that they heard music and noise coming from the rental unit late at night, which was loud enough to keep them awake. Therefore, I accept that if the neighbours could hear the music, the music was unreasonably loud. I also accept the Landlord’s and the witness HH’s testimony that the Tenant disturbed their sleep.

I find that the Landlord has provided sufficient evidence to end the tenancy on this reason provided on the Notice. Therefore, the Tenant's application to cancel it is dismissed and the Landlord's application for an Order of Possession is allowed.

I find that the tenancy ended on July 31, 2014, and that the Tenant is overholding. I hereby provide the Landlord with an Order of Possession effective two days after serving the Tenant with the Order.

The Landlord has been successful in her application, and I find that she is entitled to recover the cost of the **\$50.00** filing fee from the Tenant. Pursuant to the provisions of Section 72 of the Act, the Landlord may deduct \$50.00 from the security deposit. The remainder of the security deposit must be applied in accordance with the provisions of Section 38 of the Act.

Conclusion

The Tenant's application to cancel the Notice to End Tenancy issued June 28, 2014, is **dismissed**.

I hereby provide the Landlord an Order of Possession **effective 2 days after service of the Order upon the Tenant**. This Order may be filed in the Supreme Court of British Columbia and enforced as an Order of that Court.

The Landlord may deduct **\$50.00** from the security deposit in satisfaction of the cost of filing her application.

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 08, 2014

Residential Tenancy Branch

