



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, FF

Introduction

This is an application filed by the tenant to cancel a notice to end tenancy issued for cause and recovery of the filing fee.

Both parties attended the hearing by conference call and gave testimony. The landlord confirmed receipt of the notice of hearing package and the tenant's documentary evidence. The tenant confirmed receipt of the landlord's documentary evidence. I find that as both parties have attended and have confirmed receipt of the notice of hearing package, that I am satisfied that both parties have been properly served.

At the outset the tenant's agent requested an adjournment because their counsel was unable to attend the hearing date due to a scheduling conflict. The tenant's agent states that the tenant's counsel was retained on February 12, 2015.

The tenant's agent states that counsel has submitted in writing a request for an adjournment on February 13, 2015 by facsimile. A search of the data base on the date of the hearing showed no submissions by the tenant's counsel. A search revealed late submissions by the landlord on February 11 and again on February 13, 2015.

The tenant's agent states that the tenant would be unable provide evidence due to her medical condition. The tenant's agent states that the tenant was only able to file an application for dispute resolution with the assistance of her mother when it was received on February 2, 2015. Both parties confirmed the contents of the letter dated February 13, 2015 in their direct testimony. The letter dated February 13, 2015 states that the tenant was assessed by the Doctor on February 13, 2015 and that she has been unwell lately including multiple hospitalizations. The Doctor writes that she has been unable to properly prepare for her upcoming hearing and needs the hearing to be deferred for medical reasons. The tenant and the tenant's agent were unable to provide any specific details of the medical reasons that would impair her ability to proceed or of what evidence would be presented that would be relevant to the application to cancel a notice to end tenancy issued for cause. Both parties were informed that in this case it would

be the responsibility of the landlord to justify his reasons for cause. The tenant's agent stated that their evidence for the application for dispute resolution is incomplete and that the tenant is still trying to compile evidence to dispute the landlord's notice.

The tenant's agent stated that a brief adjournment would allow the tenant to have her counsel attend and to compile her evidence. Both parties were informed that dates for adjournments would most likely not be able to be set to accommodate a short adjournment based upon the current scheduling practices of the Residential Tenancy Branch.

The landlord disputed the adjournment request stating that it would be highly prejudicial to wait as the landlord wishes to end the tenancy based upon the notice to end tenancy and obtain an order of possession.

Rule 6 of the Residential Tenancy Branch Rules of Procedure establishes how late requests for a rescheduling and adjournment of dispute resolution proceedings are handled.

No written request was received by the Residential Tenancy Branch at the start of the hearing.

Since the tenants' counsel had not submitted a written request for an adjournment in sufficient time before this hearing, Rule 6.3 applies:

6.3 Adjournment after the dispute resolution proceeding commences

At any time after the dispute resolution proceeding commences, the arbitrator may adjourn the dispute resolution proceeding to a later time at the request of any party or on the arbitrator's own initiative.

In considering this request for an adjournment, I have applied the criteria established in Rule 6.4 of the Rules of Procedure, which includes the following provisions:

Without restricting the authority of the arbitrator to consider the other factors, the arbitrator must apply the following criteria when considering a party's request for an adjournment of the dispute resolution proceeding:

(a) the oral or written submissions of the parties;

(b) the purpose for which the adjournment is sought will contribute to the resolution of the matter in accordance with the objective set in Rule 1 (objective and purpose);

c) whether the adjournment is required to provide a fair opportunity for a party to be heard, including whether a party had sufficient notice of the dispute resolution proceeding;

(d) the degree to which the need for the adjournment arises out of the intentional actions or neglect of the party seeking the adjournment: and

(e) the possible prejudice to each party...

I note that the tenant submitted the application for dispute resolution on February 4, 2015, with the assistance of her mother. The hearing date and time were scheduled on February 17, 2014. The tenant had submitted a copy of the 1 month notice to end tenancy issued for cause with the landlord's attached reasons for cause and a letter from Health Canada Authorizing the tenant's boyfriend to possess marijuana. The tenant submitted written submissions on the details of the dispute which state that the tenant was smoking in and around the building. The tenant stated that her boyfriend holds a federal MMAR license authorizing the possession of marijuana.

While it was unfortunate that the tenant's counsel could not attend the hearing because of scheduling conflicts, the person identified as the tenant and the tenant's agent appeared and provided testimony on the tenant's original application, but had little evidence to offer. The tenant or the tenant's agent did not provide a satisfactory explanation to what impediment would cause the tenant to be unable participate and prepare for the hearing and to what evidence that the tenant planned to submit that would have had an impact on the outcome of this hearing. At the hearing, I decided that the tenant or the tenant's agent had not met the criteria established for granting an adjournment and proceeded with this hearing.

Issue(s) to be Decided

Is the tenant entitled to an order cancelling the notice to end tenancy?

Background and Evidence

This tenancy began on December 1, 2014 on a fixed term tenancy ending on November 30, 2015 and then thereafter on a month to month basis as shown by the submitted copy of the signed tenancy agreement. The monthly rent is \$1,100.00 payable on the 1st of each month and a security deposit of 50% of the monthly rent equal to \$550.00 was paid.

Both parties confirmed that a 1 month notice to end tenancy issued for cause dated February 1, 2015 with an effective end of tenancy date of February 28, 2015 was

received by the tenant from the landlord. The notice displays several reasons for cause which are:

- 1) Tenant or a 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 or another occupant or the landlord.
 - put the landlord's property at significant risk.
- 2) Tenant has engaged in illegal activity that has, or is likely to
 - damage the landlord's property.
 - adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant or the landlord.
- 3) Tenant has caused extraordinary damage to the unit/site or property/park.
- 4) Breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.

Both parties confirmed in their direct testimony that the effective end of tenancy date is corrected to March 31, 2015 as the notice was clearly served on February 1, 2015 and 1 clear month would result in the effective end of tenancy date of March 31, 2015.

The landlord also states that he served the tenant with an attached letter dated February 1, 2015 which provides 5 specific reasons for the notice.

- 1) Interfering with and unreasonably disturbing other tenants.
I have received complaints from most of the other tenants in the building regarding smoking and noxious odors coming from your apartment. The building is advertised as non-smoking and your rental agreement specifically prohibits smoking (or any kind) in or on the grounds of the building. Your refusal to comply with this requirement is impacting the other tenants in the building.

The landlord states that the tenant was served with the notice to end tenancy dated February 1, 2015 in three different ways. The landlord clarified that the tenant was served with the notice by sliding one copy under the front door of the rental unit. A second copy was placed inside the tenant's mailbox and the third copy was posted to the tenant's rear door.

While the tenant has confirmed receipt of the 1 month notice to end tenancy issued for cause dated February 1, 2015, the tenant's agent disputes the landlord's form of service stating that the landlord has failed to comply with the Act by properly serving the notice on the tenant. The tenant confirms that the notice was served in three ways consisting

of the first being served under the front door, the second under the rear door and the third stood up next to the rear exterior door.

The landlord relies on a submitted copy of a proof of service document which confirms the landlord's form of service with a witness. The tenant argues that the landlord failed to sign the proof of service making it void. The landlord confirmed in his direct testimony that he forgot to sign the proof of service document, but confirmed that the notice was served as per the proof of service statement with a witness. The landlord also acknowledged that sliding a copy under the door is not an accepted form of service, but confirmed that placing one in the mailbox and posting one to the tenant's rear door was accepted under the rules of service. The tenant's agent confirmed that the tenant did receive the notice and that the application for dispute on February 1, 2014, and that the application for dispute was filed by the tenant on February 4, 2014 with the assistance of the tenant's mother.

I find that the tenant has been served as the tenant's agent has confirmed that the tenant did receive the notice in one of the three forms of service and that there would be no prejudice to the tenant in proceeding as this is the tenant's application for dispute.

The landlord has provided copies of statements from several other tenants complaining of the smell of marijuana use in the rental property and identifying that the strong smell of marijuana was coming from the tenant's rental unit.

The landlord states that he was notified by one of the tenant's on January 31, 2015 of a strong marijuana odor coming from the tenant's rental unit and attended. The landlord states that he attended the hallway in front rental unit and could detect a strong marijuana smell. The landlord states that he walked the perimeter of the rental property and could not find any other sources of marijuana smell. The landlord states that when he was at the tenant's kitchen window outside, he would detect the strong smell of marijuana coming from within the rental unit. The landlord attended the front door of the rental unit and door and when the tenant opened the door he could still see smoke residue in the smoking device. The landlord states that he could clearly smell marijuana in the rental unit.

The tenant's agent confirmed that the tenant's boyfriend was a marijuana user who had an authorization to possess marijuana. The tenant's agent clarified that the boyfriend would pack the marijuana into a device in the rental unit and exit the rental property to use it. The tenant's agent states that this would cause a strong odor to come from the tenant's rental unit.

The landlord states that several tenants have complained that they saw the tenant's boyfriend using the marijuana as smoke could be seen inside his device as he was exiting the rental building on January 31, 2015.

The landlord also states that the tenant received a warning on May 5, 2014 by letter that smoke complaints from other tenants, on May 23, 2014 a complaint was received from a tenant via email witnessing the tenant and her boyfriend smoking and on another occasion the tenant's boyfriend smoking marijuana next to the back door.

The landlord states that a letter dated November 22, 2014 confirming the tenant's tenancy and warning the tenant that smoking in or on the property would be subject to a notice to end tenancy.

The landlord argues that after receiving the landlord's warnings that the tenant should have taken all precautions to prevent smoking on or about the rental property.

Analysis

Section 88 of the Residential Tenancy Act speaks to the service of documents and states,

How to give or serve documents generally

88 All documents, other than those referred to in section 89 [*special rules for certain documents*], that are required or permitted under this Act to be given to or served on a person must be given or served in one of the following ways:

- (a) by leaving a copy with the person;
- (b) if the person is a landlord, by leaving a copy with an agent of the landlord;
- (c) by sending a copy by ordinary mail or registered mail to the address at which the person resides or, if the person is a landlord, to the address at which the person carries on business as a landlord;
- (d) if the person is a tenant, by sending a copy by ordinary mail or registered mail to a forwarding address provided by the tenant;
- (e) by leaving a copy at the person's residence with an adult who apparently resides with the person;

(f) by leaving a copy in a mail box or mail slot for the address at which the person resides or, if the person is a landlord, for the address at which the person carries on business as a landlord;

(g) by attaching a copy to a door or other conspicuous place at the address at which the person resides or, if the person is a landlord, at the address at which the person carries on business as a landlord;

(h) by transmitting a copy to a fax number provided as an address for service by the person to be served;

(i) as ordered by the director under section 71

(1) *[director's orders: delivery and service of documents]*;

(j) by any other means of service prescribed in the regulations.

I accept the evidence provided by both parties and find on a balance of probabilities that the tenant has been served. Although the landlord served the tenant by sliding the notice under the door, placing a copy in the tenant's mailbox and positing a copy to the tenant's rear door, the tenant has acknowledged receipt of the notice and was able to file an application for dispute within 3 days of receiving the notice on February 4, 2015. The tenant was not prejudiced as she was able to file an application with the assistance of her mother. The landlord provided evidence that the notice was served in 3 ways, the first being slid under the front door, the second was placed in the mail slot and the third was posted to the tenant's rear door. The tenant has argued that the landlord did not comply with the service provisions by sliding it under the front door, sliding it under the rear door and setting it against the exterior rear door. Although the landlord failed to follow all of the rules regarding the service of documents, it cannot be said that the tenant did not receive the notice nor was she not given an opportunity to respond to it.

The tenant's request to dismiss/set aside the notice for improper service is denied.

The 1 month notice to end tenancy dated February 1, 2015 is deemed to have been served on February 3, 2015 as the tenant was able to file an application for dispute resolution which was filed on February 4, 2015.

I find based upon the evidence submitted by both parties that the landlord has provided sufficient evidence to satisfy me that there was breach of a material term of the signed tenancy agreement. Namely, condition

#10. There is to be NO SMOKING anywhere on the grounds of, or within the building.

The landlord witnessed the smell of marijuana coming from the rental and observed smoke residue when he attended and viewed the interior of the rental unit. This is further supported by the various complaints filed by other tenants given to the landlord of marijuana smoke.

The tenant's application to cancel the notice to end tenancy issued for cause is dismissed. The notice dated February 1, 2015 is upheld.

The effective end of tenancy date is corrected from February 28, 2015 to March 31, 2015.

The landlord has made an oral request to obtain an order of possession to end the tenancy on March 31, 2015. The landlord is granted an order of possession for March 31, 2015. This order must be served upon the tenant. Should the tenant 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.

Conclusion

The tenant's application is dismissed.

The landlord is granted an order of possession for March 31, 2015.

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: February 19, 2015

Residential Tenancy Branch

