



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding CRAFT PROPERTIES LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC, FF

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* ("Act") for:

- cancellation of the landlord's 1 Month Notice to End Tenancy for Cause, dated May 31, 2015 ("1 Month Notice"), pursuant to section 47;
- authorization to recover the filing fee for this application from the landlord, pursuant to section 72.

The landlord's two agents, landlord AY ("landlord") and "landlord CD," and the tenant attended the hearing and were each given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses. Witness CN provided testimony on behalf of the tenant at this hearing.

The landlord confirmed that she is the resident manager for the landlord company named in this application. Landlord CD indicated that she is the assistant manager for the landlord company. Both landlords indicated that they had authority to speak on behalf of the landlord company, as agents at this hearing.

The landlord confirmed receipt of the tenant's application for dispute resolution hearing notice ("Application"). In accordance with sections 89 and 90 of the *Act*, I find that the landlord was duly served with the tenant's Application.

Both parties confirmed that they did not serve their written evidence on the other party, but only to the Residential Tenancy Branch ("RTB"). The landlord's evidence included complaint letters from another tenant in the rental building and the tenant's evidence included letters of support from other tenants in the rental building. As evidence is required to be served on the other party prior to this hearing, in accordance with Rule 3.1 of the RTB *Rules of Procedure*, I advised both parties that I could not consider their written evidence at this hearing or in my decision. I advised the landlord that I could

only consider the landlord's two complaint letters to the tenant, dated May 11 and 19, 2015, as the tenant acknowledged prior receipt of these letters. I find no prejudice to the tenant in doing so, as he received these letters prior to the hearing, he is aware of their content and he agreed to the letters being considered at this hearing and in my decision. Accordingly, I find that the tenant was sufficiently served with the above two letters for the purposes of section 71(2)(c) of the *Act*.

The landlord testified that she served the tenant with the 1 Month Notice on May 31, 2015, by posting it to the tenant's rental unit door. Landlord CD confirmed that she witnessed this posting. The tenant confirmed receipt of the 1 Month Notice on this date. In accordance with section 88 of the *Act*, I find that that the tenant was duly served with the 1 Month Notice on May 31, 2015.

During the hearing, the tenant requested an amendment to his Application, to correct the landlord company's name. Landlord CD consented to this amendment on behalf of the landlord company. In accordance with section 64(3)(c) of the *Act* and Residential Tenancy Policy Guideline 23, I amend the tenant's Application to correct the landlord company's name, which is now correctly reflected in the style of cause on the front page of this decision.

Issue to be Decided

Should the landlord's 1 Month Notice be cancelled?

Is the tenant entitled to recover the filing fee for this Application from the landlord?

Background and Evidence

The landlord testified that this fixed term tenancy began on June 29, 2010 for a period of one year, after which it transitioned to a month-to-month tenancy. Monthly rent in the current amount of \$950.06 is payable on the first day of each month. A security deposit of \$425.00 was paid by the tenant and the landlord continues to retain this deposit. A written tenancy agreement governs this tenancy. The tenant continues to reside in the rental unit.

The landlord issued the 1 Month Notice, with an effective move-out date of June 30, 2015, for the following reason:

- *the tenant or a person permitted on the property by the tenant has:*
 - *seriously jeopardized the health or safety or lawful right of another occupant or the landlord.*

The landlord stated that the tenant has been smoking in his rental unit, contrary to his tenancy agreement and the rental building policy for crime-free housing. The landlord indicated that the tenant and/or one of his occupants, probably his son, have been smoking marijuana, which is an illegal substance, and it was affecting the health of other occupants in the rental building. The landlord testified that she was advised about this marijuana smoking after she received complaints from two other tenants in one unit ("upstairs tenants") living directly above this tenant.

The landlord stated that the upstairs tenants moved into their rental unit on May 1, 2015 and they began smelling marijuana smoke coming from the tenant's rental unit, as of that date. The landlord stated that she received the first complaint from the upstairs tenants on May 4, 2015 and that numerous complaints continued throughout May and June 2015. The landlord stated that each time she received a complaint, she went to investigate whether she could smell marijuana coming from the tenant's rental unit. She indicated that while she was initially unsure, because she had not smelled marijuana coming from the tenant's rental unit before, she concluded that it was the tenant's unit. The landlord stated that she entered other rental units above and below the tenant's unit as well as the fire lane area but that she was unable to smell marijuana coming from any other rental units including the upstairs tenants' unit. The landlord noted that when she knocked on the tenant's door, she could smell marijuana, although she did not see the tenant or any other occupants smoking in the rental unit. The landlord also claimed that she could see blue smoke coming from the tenant's balcony and that as per her previous knowledge, this was marijuana smoke.

The landlord provided a copy of two letters, dated May 11 and May 19, 2015, from the landlord to the tenant. The tenant acknowledged that he received these letters from the landlord. The letters advise the tenant that the landlord is aware of complaints and warn the tenant and his guest to stop smoking an illegal substance in the rental unit and that failure to do so, may result in a notice to end tenancy being issued. The landlord stated that she did not talk to the tenant or issue any more warning or complaint letters to the tenant regarding the marijuana smoking, after the 1 Month Notice was issued.

The landlord stated that she did not advise the tenant about the identity of the upstairs tenants who were making complaints about the marijuana smoking. The landlord indicated that the upstairs tenants were afraid of their identity being revealed but the landlord noted that she was prepared to release their identity at this hearing. The tenant denied smoking marijuana in his rental unit. The tenant stated that his son accidentally smoked marijuana around May 4, 2015 in the rental unit and that the tenant advised his son not to do so in the future and noted that it has not happened since. The

tenant and witness CN both indicated that many other tenants smoke marijuana in the rental building and this is likely the smell that the landlord is complaining about. Witness CN testified that the tenant does not smoke marijuana in his rental unit and that she has visited his rental unit on numerous occasions and has not seen or smelled marijuana. Witness CN stated that she lives in the same rental building on the floor below the tenant.

Analysis

While I have turned my mind to all of the documentary evidence and the testimony of the parties, not all details of the respective submissions and arguments are reproduced here. The principal aspects of the tenant's claim and my findings are set out below.

According to subsection 47(4) of the Act, a tenant may dispute a 1 Month Notice by making an application for dispute resolution within ten days after the date the tenant receives the notice. The tenant received the 1 Month Notice on May 31, 2015, and filed his Application on June 8, 2015. Therefore, he is within the time limit under the Act. The onus, therefore, shifts to the landlord to justify, on a balance of probabilities, the reasons set out in the 1 Month Notice.

I find that the landlord has not met its burden of proof to show that the tenant or another occupant permitted on the property by the tenant, seriously jeopardized the health or safety or lawful right of another occupant or the landlord. No witnesses were produced by the landlord at this hearing, to substantiate the landlord's claims. No medical documentary evidence was produced by the landlord to show that the health of other occupants was seriously jeopardized by the tenant. The landlord indicated that the health of the upstairs tenants was affected, as they were breathing in second-hand smoke and getting headaches. However, the landlord did not provide documentary medical evidence of this fact to show "serious jeopardy." The landlord herself confirmed that she has been living in the same building, above and to the side of the tenant's rental unit for five years, and she has not smelled this marijuana smoke before the upstairs tenants' complaints. The landlord confirmed that there have not been any complaints from other tenants in the building that their health, safety or lawful right has been affected by the tenant's alleged marijuana smoking. The landlord confirmed that the tenant's building has 54 units in one lobby and that there were no other complaints aside from the one unit where the upstairs tenants live.

For the above reasons, I allow the tenant's application to cancel the landlord's 1 Month Notice, dated May 31, 2015. The landlord's 1 Month Notice, dated May 31, 2015, is cancelled and of no force or effect. This tenancy continues until it is ended in accordance with the Act.

Conclusion

The tenant's application to cancel the landlord's 1 Month Notice, dated May 31, 2015, is allowed. The landlord's 1 Month Notice, dated May 31, 2015, is cancelled and of no force or effect. This tenancy continues until it is ended in accordance with the *Act*.

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 4, 2015

Residential Tenancy Branch

