



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Dorset Realty Group Canada Ltd.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC

Introduction

This hearing dealt with the tenant's application to cancel a notice to end tenancy for cause. The tenant and the landlord participated in the teleconference hearing.

At the outset of the hearing, each party confirmed that they had received the other party's evidence. Neither party raised any issues regarding service of the application or the evidence. Both parties were given full opportunity to give affirmed testimony and present their evidence. I have reviewed all testimony and other evidence. However, in this decision I only describe the evidence relevant to the issues and findings in this matter.

Issue(s) to be Decided

Is the notice to end tenancy for cause valid?

Background and Evidence

The tenant began occupying the rental unit in 1987. Her tenancy agreement is silent regarding whether or not the tenant can smoke in her unit. The rental unit is an apartment in a multi-unit building.

On November 27, 2015 the landlord served the tenant with a notice to end tenancy for cause. The notice indicated four reasons for ending the tenancy; however, in the hearing the landlord only focussed on one cause, that the tenant had significantly interfered with or unreasonably disturbed other occupants. I therefore did not consider the other alleged causes set out on the notice.

Landlord's Evidence

The landlord stated that they received complaints from other occupants neighbouring the tenant's unit, in which the occupants complained of cigarette smoke emanating from the tenant's unit that was significantly interfering with their quiet enjoyment. The landlord stated that at the time they issued the notice to end tenancy, the tenant's cigarette smoke was still adversely affecting other occupants in the building, one occupant had vacated, and the occupant living above the tenant had filed for arbitration. The landlord submitted evidence to show that on December 8, 2015 the upstairs occupant was awarded monetary compensation and the landlord was ordered to do repairs, as a result of the tenant's cigarette smoke causing the upstairs occupant to lose quiet enjoyment and damaging the upstairs unit.

The landlord stated that the tenant has paid rent for February 2016, and they would be willing to have an order of possession, if granted, made effective February 29, 2016.

Tenant's Response

The tenant acknowledged that she "deserved" the November 2, 2015 warning letter from the landlord, because she was smoking excessively at that time. The tenant also acknowledged that she is continuing to smoke in her unit, now using an inhaler, but she no longer smokes in her "smoking room." The tenant stated that she has treated this situation very seriously, and she did not deserve to be served the notice to end tenancy.

Analysis

I find that the notice to end tenancy dated November 27, 2015 is valid, on the ground that the tenant significantly interfered with or unreasonably disturbed other occupants. The tenant did not provide sufficient evidence to refute the landlord's evidence that at the time the notice was issued, the tenant continued to disturb other occupants' quiet enjoyment of their rental units. I therefore dismiss the tenant's application to cancel the notice to end tenancy.

I am satisfied that the notice to end tenancy for unpaid cause meets the requirements regarding form and content as set out in section 52 of the Act.

Under section 55 of the Act, when a tenant's application to cancel a notice to end tenancy is dismissed and I am satisfied that the notice to end tenancy complies with the requirements under section 52 regarding form and content, I must grant the order of possession. I grant the landlord an order of possession effective February 29, 2016. The tenant must be served with the order of possession. 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 to cancel the notice to end tenancy for cause dated November 27, 2015 is dismissed.

I grant the landlord an order of possession effective February 29, 2016. The tenant must be served with the order of possession. 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.

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 1, 2016

Residential Tenancy Branch

