



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding VANCOUVER EVICTION SERVICES
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC, CNL, MNR, MNDC, FF (Tenants' Application)
 OPC, FF (Landlords' Application)

Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution (the "Application") made by both the Landlords and Tenants. The Tenants made their Application on January 26, 2016, and the Landlords made their Application on February 16, 2016.

The Landlords applied for an Order of Possession and to recover the filing from the Tenants. The Tenants applied for the following issues:

- to cancel a notice to end tenancy for cause;
- to cancel a notice to end tenancy for the Landlord's use of the property;
- for the cost of emergency repairs;
- for money owed or compensation for damage or loss under the *Residential Tenancy Act* (the "Act"), regulation or tenancy agreement; and
- to recover the filing fee from the Landlords.

Both Tenants, both Landlords, and an agent for the company Landlord appeared for the hearing. The male Landlord and both Tenants provided affirmed testimony during the hearing. The parties confirmed receipt of each other's Application in accordance with the Act. No issues were raised in relation to the service of parties' evidence prior to the hearing in accordance with the Residential Tenancy Branch Rules of Procedure.

The hearing process was explained to the parties and they had no questions about the proceedings. Both parties were given a full opportunity to present their evidence only on the issues to be decided, make submissions to me, and cross examine the other party on the evidence provided. I have carefully considered the evidence provided by the parties but I have only documented that evidence which I relied upon to make findings in this Decision.

Preliminary Issues

There was no evidence before me that the Landlords had served the Tenants with a notice to end tenancy for the Landlords' use of the property. Therefore, this portion of the Tenants' Application was dismissed.

The Tenants confirmed during the hearing that their monetary claim related to multiple issues of entry by the Landlord for repair issues to the rental unit. The notice to end tenancy for cause was related to an allegation that the Tenants were smoking marijuana in the rental unit and had verbally assaulted another resident on the property.

Rule 2.3 of the Rules of Procedures sets out that in the course of the dispute resolution proceeding, Arbitrators may use their discretion to dismiss unrelated claims contained in a single Application with or without leave to re-apply. Therefore, as the Tenants' monetary claim was not related to the notice to end tenancy for cause, I determined during the hearing that I would only deal with the Landlords' Application for an Order of Possession, the Tenants' Application to cancel the notice to end tenancy for cause, and the recovery of the filing fees on both Applications. However, the Tenants were given leave to re-apply for their Monetary Order.

Issue(s) to be Decided

- Is there sufficient evidence in this case to warrant the ending of the tenancy with the Notice?
- Is the Landlord entitled to an Order of Possession?

Background and Evidence

Both parties agreed that this tenancy for the upper level suite of a two level residential home started on January 1, 2016 for a fixed term of one year. The Tenants paid the Landlords a security deposit of \$1,400.00 and a pet damage deposit of \$1,400.00 on December 17, 2015. Rent for the unit is \$2,800.00 payable on the first day of each month.

The Landlords' agent explained that this rental unit is a no smoking unit and from the onset of the tenancy the basement renter alerted the Landlords by text message that the male Tenant was smoking marijuana in the rental unit on two separate occasions. As a result, the Landlords served the Tenants with a breach letter dated January 11, 2016. Amongst other complaints, the Landlords write in the breach letter that smoking is not permitted.

On January 18, 2016, the basement renter sent the Landlords a written letter and a text message explaining that the Tenants had verbally assaulted him regarding the tripping of the smoke alarm on several occasions and why the basement renter had not taken the issue of the marijuana smoke with them instead of the Landlords. The basement renter writes in the letter that the Tenants displayed anger towards him and that he did not call police fearing for his own safety.

As a result, the Landlords issued the Tenants with a 1 Month Notice to End Tenancy for Cause (the "Notice") on January 19, 2016. The Notice was provided into evidence and details a vacancy date of February 29, 2016. The reasons indicated on the Notice for ending the tenancy are as follows:

- 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 of another occupant or the landlord
 - put the landlord's property at significant risk
- Tenant has engaged in illegal activity that has, or is likely to:
 - adversely affect the quiet enjoyment, security or safety or physical wellbeing of another occupant or the landlord
 - jeopardize a lawful right or interest of another occupant or the landlord
- Breach of a material term of a tenancy agreement that was not corrected within a reasonable time after written notice to do so was given.

The Landlords' agent then referred to an email dated February 5, 2016 sent by the basement renter to the Landlords explaining that he was again smelling marijuana smoke from the Tenant's rental unit and that this is making him feel uncomfortable. The Landlords' agent then referred to an anonymous email sent by an unknown party identified as "D" who writes that he was asked by the basement renter to confirm that he/she had smelt marijuana coming from the Tenants' rental unit and that he/she bears no relationship to the basement renter. The Landlords' agent stated that "D" did not want to divulge their identity for fear of repercussions.

The Landlords' agent then referred to a text message from the basement renter which states that he again smelt marijuana on February 12, 2016. The male Landlord testified that he had received numerous complaints from the basement renter about the smell of

marijuana smoke and on March 4, 2016 he had cause to visit the basement renter when he smelt marijuana coming from the Tenants' rental unit. When the Landlord was asked why he did not investigate this matter further, the Landlord replied that because they were going through this dispute resolution and had instructed the Tenants to only have written contact with them, he did not want to approach the Tenants and also feared for his safety. The male Landlord confirmed that he had not investigated any of the basement renter's allegations of marijuana smoke prior to the Notice being served to the Tenants. The Landlords' agent confirmed that it was the above two reasons only that the Landlords were seeking to end the tenancy on.

The female Tenant confirmed receipt of the January 19, 2016 Notice. The female Tenant explained that the male Tenant had undergone medical surgery and was using marijuana as pain medication. The female Tenant admitted that the male Tenant smoked this twice outside of the rental property and when it was brought to their attention the male Tenant immediately ceased from smoking it and informed the basement renter that this would not happen again.

The male Tenant testified that he has never smoked marijuana inside the rental unit and only a couple of times outside of the rental property before he was served with the breach letter dated January 11, 2016. The male Tenant disputed the Landlord's testimony that there was smoke emanating from his rental unit on March 4, 2015 and stated that the basement renter is just out to get them evicted.

The male Tenant testified that the Landlords have never discussed the issues with them directly and only through the breach letter. The female Tenant submitted that the basement renter works night shifts and they have always been accommodative of his needs. In relation to the basement renter's letter detailing the verbal assault, the male Tenant disputed this stating that this was not a verbal attack but an exchange of words regarding the smoke alarm that kept going off in the house and how this was creating a disturbance.

The male Tenant testified that the basement renter was not present for this hearing to be asked questions on this matter so therefore this meant that it was his word against the Tenants' word. The Landlords' agent confirmed that although the basement renter was planning on appearing for this hearing he decided not to in the end.

Analysis

In examining the Notice, I find it was issued to the Tenants in the correct form and contained the required contents as stipulated by the Section 52 of the Act. I also accept

that the Tenants received the Notice on January 19, 2016 and disputed the Notice within the ten day time limit afforded to them under Section 47(4) of the Act.

When a landlord issues a tenant with a Notice for the reasons documented above, the landlord bears the burden to prove, on the balance of probabilities, the reason on the Notice to end the tenancy. In this case, I must determine if the Landlords have provided sufficient evidence for the two reasons testified to in order to end the tenancy.

Having carefully considered the evidence of both parties in this case, I find the Landlords have failed to prove the Notice. There is insufficient evidence before me that the male Tenant smoked marijuana inside the rental unit. However, I do accept the undisputed evidence that the male Tenant was smoking marijuana before he was served with the breach letter. However, I find that in the interim time period from when the Tenants were served with the breach letter on January 11, 2016 to the time they were served the Notice on January 19, 2016 there is insufficient evidence before me that during this time the male Tenant continued to smoke marijuana either inside or outside of the rental unit. I find the Landlords' evidence that the male Tenant smoked marijuana during this time period is heavily reliant on the allegations made by the basement renter. The basement renter failed to appear for this hearing to provide testimony regarding the continued breach after the warning letter was served to the Tenants on January 11, 2016 or make himself available to be cross-examined on his allegations. Therefore, I find that the basement renter's written evidence results in his word against the Tenants' word and the Landlords have not met the burden of proof.

In making the above finding I have placed little evidentiary weight or value to the email provided by the anonymous person who was asked by the basement renter to corroborate his allegations. This is because this unknown person failed to provide direct testimony and was not able to be cross examined by the Tenants on the evidence being relied upon.

While the male Landlord was able to corroborate the basement renter's statement that there was marijuana smoke coming from the Tenants' rental unit, I find that this event occurred well after the Notice was given to the Tenants. In addition, I find that the Landlords' lack of evidence gathering and investigation into the basement renter's allegations results in little corroboration by an impartial third party and is not sufficient for me to conclude that after the Tenants were issued with the breach letter the marijuana activity continued.

In addition, I also note that the tenancy agreement signed by the parties does not include a written term that the rental unit is a no smoking unit. While I find that this does

not give the Tenants an automatic right to smoke in or around the rental unit, the reason indicated on the Notice that the Tenants have breached a material term must fail as there is no material term to this effect in writing.

In relation to the Landlords' allegations that the Tenants verbally assaulted the basement renter, I find that this evidence also results in one party's word against the other. There is no direct, supporting or corroborating evidence of what occurred between the male Tenant and the basement renter on the day of the alleged verbal assault. Therefore, I am unable to determine the exact nature and extent of the alleged assault to the point where I am able to conclude that the tenancy should be ended on this basis.

Based on the foregoing, I find the Landlords have not provided sufficient evidence to show that the tenancy should be ended. As a result, I cancel the Notice dated January 19, 2016 and the tenancy will continue until it is ended in accordance with the Act.

As the Tenants have been successful in cancelling the Notice, pursuant to Section 72(2) (a) of the Act the Tenants may recover the \$100.00 filing fee by deducting it from a future installment of rent. As the Landlords have failed to prove the Notice, the Landlords' request to recover the filing fee from the Tenants is dismissed.

Conclusion

The Landlords have failed to prove the Notice. Therefore the Notice is cancelled. The Tenants are granted their filing fee from their next installment of rent. The remainder of the Tenants' Application was not heard and is dismissed with leave to re-apply. The Landlords' Application is dismissed.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the Act.

Dated: March 10, 2016

Residential Tenancy Branch