



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding ROCKWELL PROPERTY MANAGEMENT INC.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC

Introduction

This hearing dealt with the Tenant's Application for Dispute Resolution pursuant to the section 47 of the *Residential Tenancy Act* (the "Act"). The Tenant applies to cancel a 1 Month Notice to End Tenancy for Cause, dated February 10, 2016 (the "1 Month Notice").

The Tenant and her advocate, A.T., attended the hearing. Attending the hearing for the Landlord were B.J., the building manager; M.S., the assistant building manager; and three witnesses: P.M., T.K., and D.L. The parties and witnesses gave affirmed testimony. Both parties were provided the opportunity to present their evidence orally and in written and documentary form, and make submissions to me.

Preliminary and Procedural Matters

On review of the application materials I noticed a discrepancy in the name of the Landlord. B.J., the building manager, confirmed the correct name of the corporate Landlord is "Rockwell Property Management Inc." Pursuant to section 64 of the Act, and with the agreement of the parties, I exercise my authority to amend the application accordingly.

Issue to be Decided

Should the 1 Month Notice dated February 1, 2016 be cancelled?

Background and Evidence

The parties each provided a copy of a Residential Tenancy Agreement dated March 15, 2015 (the "Tenancy Agreement"). It confirms a month-to-month tenancy commenced

on March 15, 2015, with rent in the amount of \$1,000.00 being payable on or before the first calendar day of each month.

The Tenant made few submissions of her own, relying instead on the capable assistance of A.T. A.T. advised the Tenant lives with significant medical issues. She is currently undergoing a course of radiation therapy for the treatment of breast cancer.

In addition, the Tenant is a member of a local compassion club, which provides clients with a safe source of cannabis-based treatments. This form of treatment is supported by her doctor. In a signed note dated July 29, 2015, the Tenant's doctor states: "If I were legally able to do so, I would consider prescribing cannabis for this condition." The Tenant's use of marijuana in the rental unit is at the core of this dispute.

The Tenant's children live with her in the rental unit.

As the Landlord bears the onus of proving the validity of the 1 Month Notice, I will summarize the Landlord's evidence first.

The Landlord's evidence confirms the 1 Month Notice was served on the Tenant on February 10, 2016, with an effective date of March 31, 2016. Tenant's Application confirms, and I find, that she received the 1 Month Notice on February 11, 2016.

The reasons indicated on the 1 Month Notice issued by the Landlord 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.

Tenant has engaged in illegal activity that has, or is likely to adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant or the landlord.

As submitted by A.T., the Tenant's advocate, the Landlord did not adduce any evidence of illegal activity on the part of the Tenant. I agree. Accordingly, this ground for issuing the 1 Month Notice will not be considered further.

B.J., the building manager, provided oral testimony elaborating on the reasons for issuing the 1 Month Notice, which I accept. Grounds included the presence of smoke and the smell of marijuana emanating from the Tenant's rental unit, the construction of a wood and plastic barrier on the deck between the Tenant's suite and the adjacent suite, and the Tenant's demeanour – yelling and aggression – when interacting with the

Landlord and other occupants of the building. The primary issue impacting residents appears to be marijuana smoke.

B.J. assumed the role of building manager on September 22, 2015. Soon after, he received four complaints from tenants about the presence of smoke in the building and the smell of marijuana coming from the Tenant's rental unit. In response, he sent a letter to the Tenant, dated October 15, 2015, which was submitted as evidence. In the letter, the Tenant was advised the smoke was "adversely affecting other tenants" and was asked to use other methods of consumption. The Landlord advised he would "have no other recourse but give a notice to move as per the RTA" if the Tenant choose not to comply. The Tenant confirmed she received the October 15 letter.

Witnesses presented by the Landlord provided additional evidence, which I accept. They have been frustrated by this ongoing issue. P.M. lives in the rental unit next to the Tenant. P.M. suffers from Chronic Obstructive Pulmonary Disease. She gave evidence of the negative health impact of the intruding smoke on her condition, and stated she has experienced coughing fits as a result of the smoke emanating from the subject rental unit. She further stated that although she has discussed this with the Tenant, the smoking continues unabated.

T.K. lives in the same unit as P.M. and gave evidence that the Tenant frequently has other individuals over and that it appears that all of them smoke marijuana in the Tenant's rental unit. He described having to put a towel along the base of the door to his unit to keep the smell out.

D.L. lives in the rental unit above the Tenant. He described having to close the patio door in the summer to prevent the smoke from entering from the subject unit.

The Tenant says she needs to use marijuana for a medical condition, and has her doctor's support in doing so. She further submits the marijuana smoke does not significantly interfere with or unreasonably disturb another occupant or the landlord. The Tenant says she does her best to use marijuana in a way that minimally interferes with the other occupants of the building.

Analysis

Based on the above testimony of the parties and witnesses, and on the documentary evidence submitted, I find on a balance of probabilities that:

Section 47 of the Act describes the circumstances that permit a landlord to give notice to end a tenancy for cause. This provision requires a tenant in receipt of such notice to dispute it within 10 days after the date the notice is received. If a tenant fails to dispute the notice in this period, the tenant is conclusively presumed to have accepted the tenancy ended on the effective date of the notice.

The burden of proof is on the Landlord to demonstrate the 1 Month Notice is valid. Both parties submitted a copy of the 1 Month Notice in their evidence packages. Based on the testimony of both parties, and on the Tenant's Application, I find the Tenant received the 1 Month Notice on February 11, 2016, and has been duly served.

Further, I find that, having filed the Application on February 23, 2016 – 12 days after receipt of the 1 Month Notice – the Tenant is out of time to bring her Application. Accordingly, the Tenant's application is dismissed.

Nevertheless, I have considered the Application on the merits and am satisfied the Tenant would not have been successful in any event. The reasons for this conclusion are as follows:

First, the Tenancy Agreement specifically addresses smoking on the property and in the rental unit. Paragraph 43 states:

SMOKING. The tenant agrees to the following material term regarding smoking:

No smoking of any combustible material is permitted on the residential property, including within the rental unit.

Second, I heard the affirmed testimony of several witnesses, all of whom were occupants of the building. I am satisfied that the smoke and smell of marijuana from the Tenant's rental unit has been an ongoing issue in the building and, despite the efforts of the Landlord, is more likely than not to have significantly interfered with and unreasonably disturbed other occupants in the building.

Accordingly, the Tenant's application also fails on the merits.

Section 55 of the Act requires me to grant an Order of Possession to a landlord when a tenant's application for dispute resolution is dismissed. Accordingly, I grant an Order of Possession to the Landlord.

The Order of Possession will be effective April 30, 2016, at 1:00 p.m. Upon receipt, the Landlord must serve a copy of the Order of Possession on the Tenant. The rights and obligations of the Tenant and Landlord pursuant to the Agreement and the Act will continue until the tenancy terminates in accordance with this Order, or otherwise in accordance with the Act.

Should the Tenant fail to comply with the Order of Possession, it may be filed in and enforced as an Order of the Supreme Court of British Columbia.

Conclusion

The Tenant's application is dismissed.

Pursuant to section 55 of the Act, I grant an Order of Possession to the Landlord on the terms above.

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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: April 14, 2016

Residential Tenancy Branch