



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding GAMOLO'S GROUP PROPERTY MANAGEMENT INC
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MT CNC FF

Introduction

This hearing was convened in response to an application by the tenant for an Order setting aside a notice to end this tenancy and recover the filing fee. The tenant and their representative, and 2 agents for the landlord participated in the conference call hearing. The tenant's representative (the tenant) provided all testimony for the applicant tenant. Both parties acknowledged receiving all the evidence of the other. I have not considered any evidence which may have been submitted after the hearing. I have reviewed all evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision. Prior to concluding the hearing both parties acknowledged presenting all of the relevant evidence that they wished to present.

Preliminary matters

The tenant applied for *more time* to file their dispute; however the tenant filed within the legislated time permitted to do so, and is moot. The parties were provided opportunity to mutually resolve their dispute to no avail. The hearing proceeded on the merits.

Issue to be Decided

Should the notice to end tenancy be set aside?

Background and Evidence

The tenancy started November 01, 2015. The parties agreed the tenant received

from the landlord a one month notice to end tenancy for cause (the “Notice”) dated May 24, 2016. The Notice alleges one reason: the tenant has *significantly interfered with or unreasonably disturbed another occupant or the landlord*.

The landlord testified the tenant was served with a one month notice to end tenancy for cause because the tenant had caused other tenants to be uncomfortable and their right to quiet enjoyment negatively affected by the tenant’s smoking of marijuana on the residential property, which the tenant submitted, is to their exclusion of smoking cigarettes. The landlord testified that tenants are permitted to smoke cigarettes in a designated area on the property, which the parties agreed has recently been more aptly defined with new signage.

The tenant testified to having a medical prescription for medicinal marijuana. They provided a document titled *Letter of Medical Diagnoses* stating, “severe depression + anxiety since teenage years” – as written. The tenant testified they have a right to smoke marijuana, as afforded by their prescription, in its use as medicine. The landlord testified they are not convinced the tenant has a valid medical prescription allowing the tenant to legally use marijuana for medical purposes, and that the tenant did not notify them of same at the outset of the tenancy. The tenant claims it would have been inappropriate to inform the landlord as it would mean having to disclose medical information. The landlord submitted that notwithstanding a valid medical prescription from the tenant they consider marijuana to be an “illegal substance” and does not want the tenant to smoke their marijuana on the residential property.

Regardless of the foregoing the tenant testified thinking they had come to agreement with the landlord at one point as to where they could smoke their marijuana and agrees to hereon smoke their marijuana only in the designated outdoor area set aside for smoking on the residential property. However, the landlord testified that only cigarettes are permitted smoked in the designated smoking area of the property: marijuana and other illegal substances are excluded and the tenant should smoke their marijuana beyond the landlord’s property. The landlord testified that complaints have emanated from certain tenants concerning the odor of the tenant’s marijuana smoking near the

residential building. The complaints are of the associated stronger and longer lasting odor than that of cigarettes smoking. The landlord provided and testified to receiving written complaints stating that the tenant's marijuana smoke odor intrudes into the residential hallways and into their suites, interfering with their quiet enjoyment of their unit. The landlord testified that at least 2 neighbouring occupants complained they were disturbed by what they described as the tenant's seeming indifference to the affects of their marijuana smoking: citing their discomfort from the strong or persistent odor wafting inside the shared building. The written complaints also are of the tenant's "blatant" lack of concealment of the marijuana smoking, routinely viewed by their children and their friends walking to their home: causing them discomfort by having to then manage what their children witnessed. The landlord's written statements from the 2 neighbouring occupants claimed to have witnessed the tenant smoking marijuana several times daily in the carport on or about their motorcycle. The landlord highlighted that the statements aptly articulate the various intrusion to the neighbouring occupants caused by the tenant's smoking of marijuana on the residential property.

The landlord testified in respect to some events leading to issuing the Notice to End, and provided the following in support of the Notice, also in documentation. The landlord testified that on April 21, 2016 they requested of the tenant to cease their smoking *illegal substance* openly and frequently on the residential property, as *smoked* marijuana odor was infiltrating the building. On May 13, 2016 the landlord spoke to the tenant about the continued smoking of *illegal substance* openly on the residential property. Again on May 16, 2016 the landlord testified the tenant was seen smoking marijuana openly on their motorcycle, on the residential property. On May 19, 2016 the landlord provided the tenant a letter pursuant to the May 13, 2016 discussion with the tenant highlighting the landlord's opposition to the tenant smoking marijuana, or *illegal substance* anywhere on the residential property, with the landlord suggesting, "public property close by", and, "using discretion". The landlord separately testified the tenant's open or blatant conduct respecting their marijuana smoking has or could reflect negatively on the image of the landlord's property and its potential users or guests. In their evidence the tenant provided that they are not the only marijuana smoker in the

residential property known to the landlord, and they are being unfairly targeted. In their opinion the landlord's interest is not wholly grounded in concern for other tenants of the property, but in the image of the property to would-be short term rental users of the property garnered via AirBnB. The landlord denied they are being unfair, but rather, are trying to manage an ongoing problem to the benefit of all tenants.

Analysis

The landlord bears the burden of proving, on the balance of probabilities, that they have grounds to end the tenancy.

I prefer the landlord's evidence that the tenant has not produced a valid medical marijuana prescription. Nothing in the tenant's evidence purporting to be a medical marijuana prescription mentions the word marijuana, or colloquial derivative. I have not been provided evidence that the tenant's *Letter of Medical Diagnoses* is a prescription, for anything. Therefore, I find the tenant's purported prescription cannot be for medicinal use of marijuana. In further consideration of the tenant's arguments I find it is not a certainty that informing the landlord of possessing a prescription for marijuana exposes medical information; and, more likely than not may have avoided the misunderstandings currently at hand.

I have considered the tenant's argument the landlord has an ulterior agenda respecting the tenant's smoking of marijuana. I find that the landlord's repeated use and emphasis on the tenant "*openly*" or *unconcealed* smoking of marijuana supports the tenant's argument the landlord places importance on the image and reputation of the residential property. I have not been presented evidence that this position is to a greater degree than the landlord's position respecting their stated duty of care to other occupants of the residential property. I accept the landlord may have differing agenda when it comes to the smoking of marijuana on the residential property, but I have not been presented evidence an ulterior motive overrides the landlord's position as to their obligation to ensure the rights all their tenants. I find the landlord's evidence speaks to the landlord's conditional willingness to tolerate the tenant's smoking of marijuana if not "blatant" or

aparent to the point of intrusion on other occupants or the reputation of the residential property. As a result, I am not satisfied a personal agenda is the landlord's motive in this matter.

The landlord's Notice does not claim to seek an end to the tenancy because of some breach of the agreement regarding *smoking* on the residential property. I find that what is relevant is the undisputed evidence the tenant smokes marijuana on the residential property. Why the tenant smokes marijuana is irrelevant, but it must be noted the tenant has not proven they possess a medical prescription for its legal use. It is relevant that outside of medical purposes, marijuana remains illegal across Canada. It is relevant that police are still able to hand out charges for illegal possession and trafficking of marijuana. I find the concerns and complaints from neighbouring occupants are relevant and on balance of probabilities I find the landlord's evidence aptly articulates the intrusion upon the neighbouring occupant's quiet enjoyment caused by the tenant's unabated marijuana smoking.

I am satisfied the tenant was repeatedly made aware as early as April 21, 2016 that their marijuana, whilst smoked on the landlord's property, was infiltrating into the building and interfering with the quiet enjoyment right of other residents, more so than cigarette smoking. I find the tenant was again apprised of concerns with the effects of their smoking of marijuana on May 13, 2016. I am satisfied that the letter to the tenant dated May 19, 2016 contained information of "smoked marijuana infiltrating the building" as the over-reaching concern and messaging of the letter. I accept that the May 16, 2016 marijuana smoking incident acknowledged by both parties effectively served to harden the landlord's resolve to address the ongoing complaints of other tenants moving forward. I find it was available to the tenant to address and accommodate the landlord's concerns and those of other tenants early in this dispute, but the tenant did not. I find the tenant's argument as to their right to smoke marijuana for medical reasons is not supported; and more likely than not, is what blinded the tenant to the rights of other tenants.

I find on the balance of probabilities that in smoking marijuana on the residential property the tenant has unreasonably disturbed other occupants of the building as well as the landlord. I find that the landlord has established grounds to end this tenancy and for that reason, I decline to set aside the Notice. Under the provisions of Section 55, I must issue an order of possession when I have upheld a notice to end tenancy and that Notice is in the approved form. Accordingly, I so Order.

As the effective date of the Notice has already passed I Order the tenancy will end July 31, 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. In discussion during the hearing the parties were aptly apprised it is available to them to *mutually agree* as to if, when, and how the tenancy ends. However, in the absence of *mutual agreement*, my Order stands.

Conclusion

The tenant's application is **dismissed**. The tenancy will end on **July 31, 2016** and the landlord is granted an Order of Possession effective on that date.

This Decision is final and binding on both parties.

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: July 11, 2016

Residential Tenancy Branch