



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding FORREST TERRACE APARTMENTS
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes: OPC CNC FF

Introduction:

Both parties made Applications for Dispute Resolution but only the landlord attended the hearing. The landlord gave sworn testimony that they served the One Month Notice to End Tenancy on August 23, 2016 by posting it on the door and their Application personally. The Notice is dated August 23, 2016 to be effective September 30, 2016. They received a copy of the tenant's Application. The landlord applies pursuant to the *Residential Tenancy Act* (the Act) for orders as follows:

- a) An Order of Possession pursuant to Sections 47, and 55 for cause; and
- b) An order to recover the filing fee pursuant to Section 72.

The tenant applies pursuant to the Act to cancel the Notice to End Tenancy for cause and to recover her filing fee.

Issue(s) to be Decided:

Has the landlord proved on the balance of probabilities that there is good cause to end this tenancy and obtain an Order of Possession? Are they entitled to recover the filing fee?

Or is the tenant entitled to any relief?

Background and Evidence:

Only the landlord attended and was given opportunity to be heard, to present evidence and to make submissions. The undisputed evidence is that the tenancy commenced October 1, 2014, a security deposit of \$525 was paid and rent is currently \$1070 a month.

The landlord served the Notice to End Tenancy pursuant to section 47 for the following causes:

- (a) The tenant or a person permitted on the premises by the tenant

- (i) Has significantly interfered with and unreasonably disturbed another occupant or the landlord;
- (ii) Has seriously jeopardized the health, safety or lawful right of another occupant or the landlord; and
- (iii) Has engaged in illegal activity that has or is likely to affect the quiet enjoyment, security, safety or physical wellbeing of another occupant or the landlord.

The landlord provided evidence that the tenant smokes marijuana in her suite and sometimes on her balcony. She refuses to stop after receiving warning letters. This is seriously affecting the health and peaceful enjoyment of other residents. The landlord provided three letters from other residents regarding health concerns and the significant effect the smell of marijuana smoke was having on their peaceful enjoyment.

In her application, the tenant said she has a prescription to smoke medical marijuana. The landlord said they had a previous hearing and she was ordered to show it to the landlord and discuss the situation but she never contacted them or showed them anything. Whether or not it is a prescription, the landlord said the smoking of it is seriously affecting other tenant's health and welfare. It is also illegal and violates their Crime Free Addendum to their lease. In the previous hearing, the landlord failed to succeed in ending the tenancy for they had not issued a valid Notice to End Tenancy.

In evidence is the Notice to End Tenancy, the lease, three complaint letters from other residents and a warning letter.

On the basis of the solemnly sworn evidence presented at the hearing, a decision has been reached.

Analysis

Order of Possession

I find that the landlord is entitled to an Order of Possession. I find the landlord's evidence that the tenant's smoking of marijuana is significantly disturbing the peaceful enjoyment of other occupants and affecting their health and wellbeing is well supported by letters from other residents. One of them is undergoing medical treatment and the smell causes her extreme nausea, she is unable to open her windows and may be forced to move. I find the landlord has attempted to work with the tenant to get an acceptable solution without success. An Order of Possession is issued effective two days from service as requested by the landlord. I find the landlord entitled to recover their filing fee.

I dismiss the Application of the tenant to cancel the Notice to End Tenancy. Whether or not she has a medical prescription for marijuana, I find this does not give her the right to smoke marijuana in her suite or on the balcony so that it jeopardizes the health of others and seriously affects their peaceful enjoyment contrary to section 28 of the Act. Although she states in her Application that she would be willing to get a vaporizer, I find the weight of the evidence is that she has not approached the landlord to resolve the problem.

Conclusion:

I find the landlord is entitled to an Order of Possession effective two days from service and to recover filing fees paid for this application.

I dismiss the Application of the tenant without leave to reapply. I find she is not entitled to recover her filing fee due to her lack of success.

I HEREBY ORDER that the landlord may recover the \$100 filing fee by deducting it from the security deposit of the tenant.

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: October 26, 2016

Residential Tenancy Branch