



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding M. WARNER CONTRACTING LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC, OPC, OPR, MNR, ET, FF

Introduction

In the first application the tenant seeks to cancel a one month Notice to End Tenancy dated September 27, 2016 and received September 28. The Notice alleges that the tenant or a person permitted on the property has significantly interfered with or unreasonably disturbed another occupant or the landlord and that the 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.

Such grounds, if proven, are lawful grounds for eviction under s. 47 of the *Residential Tenancy Act* (the “Act”).

The DETAILS OF THE CAUSE portion of the Notice states: “ongoing smoking marijuana inside and outside the apt with other tenants complaining and leading to several Bylaw Notices and Fines.”

In the second application the landlord seeks an order of possession pursuant to the one month Notice and pursuant to a ten day Notice to End Tenancy for unpaid rent dated September 6, 2016 and received by the tenant on September 7. The landlord also seeks a monetary award for unpaid rent in the amount of \$350.00.

All parties attended the hearing and were given the opportunity to be heard, to present sworn testimony and other evidence, to make submissions, to call witnesses and to question the other. Only documentary evidence that had been traded between the parties was admitted as evidence during the hearing. The landlord had forwarded its evidentiary material to the tenant by registered mail sent October 11, 2016. The tenant failed to claim the mail and it was returned to the landlord “unclaimed by recipient.” The tenant says she thought it was a package from someone else and did not claim it. This is not an acceptable reason for refusing the mail. At hearing it was determined that the tenant was deemed to have received the evidence.

Issue(s) to be Decided

Is the ten day Notice a valid Notice to end the tenancy? If not, has the landlord established grounds for ending the tenancy pursuant to the one month Notice for cause? Is the landlord owed rent?

Background and Evidence

The rental unit is a two bedroom condominium apartment. The tenancy started in May 2015. The monthly rent is currently \$950.00, due on the first of each month and paid directly to the landlord on behalf of the tenant by the welfare office. The landlord holds a \$475.00 security deposit.

The ten day Notice claims that the tenant failed to pay \$350.00 rent due on an unspecified date in September 2016. It is not disputed that the rent was paid and that the \$350.00 claimed was not rent but strata fines that had been imposed on the tenant (and ultimately the landlord) by the strata council for the building.

The tenant did not dispute the Notice nor did she pay the \$350.00 demanded in it within five days after receiving the Notice or at all.

The landlord continued to receive money without comment, sent as rent by the welfare office for the months of October and November.

Ms. W. for the landlord presents copies of "Violation Warning" letters to the tenant from the strata corporation regarding incidents May 19, 2015, October 3, 2015, June 25, 2016, August 20-21, 2016 and September 3, 2016. All the letters relate to the tenant smoking pot on her balcony or deck, disturbing tenants. There were complaints of a very strong pot smell and very loud coughing at late hours of the night.

By the third letter the strata corporation began imposing fines; first \$50.00, then \$100.00, then \$200.00 with the September 3 incident.

Each letter offered the tenant an opportunity to answer the complaint, indicating that a hearing with the strata board would be offered.

There was a sixth letter sent in October, after the one month Notice had been issued. I deem it of no relevance to the question of validity of this particular Notice.

The tenant says she responded verbally to three of the violation warning letters; the September 23, the later October letter and an earlier one, either February or June. She says she has children and does not smoke. She offered to let the landlord into her rental unit to show it does not smell like smoke. She admits the one incident captured on video by the landlord, but says she was smoking the pot outside the building and has agreed not to do so in the future.

Analysis

Regarding the ten day Notice, clearly, had the tenant applied to challenge it she would have been successful. The Notice is not properly dated and the \$350.00 claimed in it is not rent, as required by s. 46 of the *Act*.

However, the tenant did not apply to dispute that Notice. As a result, by operation of s. 46 she is “conclusively deemed” to have accepted the end of her tenancy. Under that Notice her tenancy ended September 18, 2016.

Yet, after that, the tenant tendered her rent to the landlord (through the welfare office) and the landlord accepted it as rent unconditionally. In this circumstance I find that the landlord reinstated the tenancy. I cannot rely on the ten day Notice for an order of possession.

Regarding the one month Notice, I have considered the evidence carefully and conclude that the tenant has been smoking marijuana in or around her apartment, despite repeated warnings, and that it has unreasonably disturbed other occupants.

Her evidence is not persuasive. On the one hand she says she has children and does not smoke marijuana, on the other hand she admits to smoking it on the grounds of the building. She testifies that she verbally opposed two of the relevant violation warning letters but did not pursue the imposition of the fines by the strata corporation. In my view, a reasonable person would have pursued the matter of their innocence with considerably more diligence.

Conclusion

I find that the tenant has unreasonably disturbed other occupants in the building by the repeated smoking of marijuana in and around the premises. The one month Notice to End Tenancy is a valid Notice. It has resulted in this tenancy ending October 31, 2016. The landlord is entitled to an order of possession.

The landlord has claimed a monetary award for rent but no rent is owed. If it wishes to pursue recover of the strata fines it is free to bring an application in that regard, clearing stating that it seeks money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement (MNDC).

The landlord is entitled to recovery its \$100.00 filing fee for this application. I authorize it to recover \$100.00 from the security deposit it holds, in full satisfaction of the fee.

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: November 22, 2016

Residential Tenancy Branch