



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, O

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

The tenant applied for:

- cancellation of the landlord's 1 Month Notice to End Tenancy for Cause (the 1 Month Notice) pursuant to section 47; and
- seeking an "other" remedy under the Act.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to make arguments.

Issues to be Decided

Should the landlord's 1 Month Notice to End Tenancy for Cause be cancelled? If not, is the landlord entitled to an Order of Possession?

Is the tenant entitled to other remedies under the Act?

Background and Evidence

The tenancy began on or about April 1, 2008. Rent in the amount of \$1428.80 is payable in advance on the first day of each month. The tenant also pays \$50.00 a month for parking. At the outset of the tenancy the landlord collected from the tenant a security deposit in the amount of \$575.00. The landlord testified that he has received numerous complaints about the subject tenants' extensive marijuana smoking and aggressive and abusive behaviour towards other tenants. The landlord testified that the marijuana smoking became a problem in May 2016 up to today's hearing. The landlord testified that he gave the tenant two warning letters to cease and desist the marijuana smoking. The landlord testified that he has also received numerous complaints from

other tenants about the subject tenants' behaviour. The landlord testified that when the subject tenant was approached by other tenants, the subject tenant became aggressive, abusive and threatening. The landlord testified that many of his tenants are quality long term seniors who are fearful of the subject tenant. The landlord testified that he himself has seen the subject tenant "get in people's faces" whenever she is asked about her marijuana smoking.

CR gave the following testimony. CR testified that she has personally observed the tenants very aggressive and threatening behaviour towards other tenants in the building. CR testified that she has politely asked the subject tenant to smoke marijuana off the property but the subject tenant continues to smoke on her balcony causing the smoke to enter numerous suites. CR testified that when other tenants have asked her to smoke somewhere other than the balcony, the subject tenant becomes so aggressive that the tenants are fearful for what she might do. CR testified that several other tenants are so intimidated and fearful of the subject tenant, they didn't want to call in to provide testimony for fear of retribution. CR testified that she will move out if the subject tenant continues to live there.

The tenant gave the following testimony. The tenant testified that she is dealing with numerous health and personal problems and that marijuana smoking helps ease her anxiety. The tenant testified that the building doesn't have a "no smoking" clause and that marijuana will eventually become legal. The tenant testified that she is a good tenant and would be willing to leave if the landlord provides her four months free rent and then allow her to return to her unit when she returns "smoke free". The tenant testified that she would like to stay in the building for the long term.

Analysis

While I have turned my mind to all the documentary evidence and the testimony of the parties and witness CR, not all details of the respective submissions and arguments are reproduced here. The principal aspects of the tenant's claim and my findings around each are set out below.

The landlord issued a One Month Notice to End Tenancy for Cause on September 28, 2016 on the following grounds:

Landlord's notice: cause

47 (1) *A landlord may end a tenancy by giving notice to end the tenancy if one or more of the following applies:*

(d) the tenant or a person permitted on the residential property by the tenant has

(i) significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property,

(e) the tenant or a person permitted on the residential property by the tenant has engaged in illegal activity that

(ii) has adversely affected or is likely to adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant of the residential property, or

(iii) has jeopardized or is likely to jeopardize a lawful right or interest of another occupant or the landlord;

(h) the tenant

(i) has failed to comply with a material term, and

(ii) has not corrected the situation within a reasonable time after the landlord gives written notice to do so;

The landlord and his witness both testified that the marijuana smoke wasn't the biggest problem with the subject tenant; it was her aggressive, threatening and intimidating behaviour. The tenant remained silent on this point and did not dispute those allegations from the landlord, the witness or the witness statement submitted by the landlord from another tenant. I agree with landlord and CR and find that the tenants' aggressive, threatening and intimidating behaviour is the main issue.

In addition, I also find that even after the landlord issued warning letters to the tenant to take caution in her behaviour, she did not. Furthermore, even after the landlord issued the notice to end tenancy, the tenant continued on her aggressive, threatening and intimidating behaviour as is evident in the landlords' documentary evidence.

Based on the landlords' extensive documentary evidence, the witness testimony, and that the tenant did not dispute their testimony or documentation, I find that the tenancy must end on the ground that the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property. Based on the above facts I find that the landlord is entitled to an order of possession pursuant to Section 55 of the Act. 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.

The tenant was seeking “other remedies” under the Act for costs she incurred preparing for this hearing. It was explained that the Act does not allow for the recovery of doctors notes or photocopying fees and I therefore dismiss that portion of her application. The tenant indicated that she understood.

The tenant has not been successful in her application. The Notice remains in full effect and force. Based on the timing of this hearing and the administration of this decision, the tenants’ medical challenges and her long tenure in the building, I find it appropriate for the order of possession to be effective at 1:00 p.m. on December 31, 2016.

Conclusion

The tenant’s application is dismissed in its entirety without leave to reapply.

The landlord is granted an order of possession.

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