



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Sea to Sky Community Services Society
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes

Tenant's Application made August 5, 2016: CNC

Landlord's Application made August 8, 2016: OPC; FF

Introduction

This Hearing dealt with cross Applications for Dispute Resolution. This matter was first heard on September 26, 2016. No one signed in for the Tenant on September 26, 2016, and his Application was dismissed. The Landlord's Application was granted and an Order of Possession was issued. The Landlord was also authorized to recover the cost of the filing fee.

On September 30, 2016, the Tenant filed an Application for Review Consideration on the grounds that he was not able to attend the Hearing on September 26, 2016, due to circumstances that could not be anticipated and were beyond his control. The Tenant's Application for Review Consideration was granted, the Order of Possession and recovery of the filing fee were suspended and a new Hearing was ordered. This is that new Hearing.

The Tenant is applying to cancel a Notice to End Tenancy for Cause issued July 27, 2016 (the "Notice").

The Landlords are applying for an Order of Possession and to recover the filing fee for the Application.

Both parties appeared, gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions to me.

The Tenant served the Landlords with Notice of this Review Hearing "in mid-October".

Issue(s) to be Decided

Is the Notice a valid notice to end the tenancy or should it be cancelled?

Background and Evidence

The Notice provides the following reasons for ending the tenancy:

- 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; and jeopardize a lawful right or interest of another occupant or the landlord.
- Breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.

The Tenant moved into the rental property 7 years ago. Rent at the beginning of the tenancy was “market rental” at \$700.00 per month. A security deposit in the amount of \$350.00 was paid. Current rent is geared to the Tenant’s income and is \$476.00 per month, due on the first day of each month.

The tenancy agreement includes a “smoke-free addendum”, a copy of which was provided in evidence. The addendum describes “smoke-free housing”, as follows:

1. this residential premises and the residential property have been designated as a Smoke Free living environment; and
2. the tenant, occupants, guests, and invitees of the tenant or occupants shall not smoke anywhere in the residential premises, including the balcony, or on/in the residential property, including the common areas such as the stairwells, patios, gardens, courtyards, playgrounds, walkways.”

The addendum also defines “smoke-free” as follows:

1. the tenant, occupant, guests or invitees will not inhale or exhale smoke from a lit cigarette, cigar, pipe, or other equipment that burns tobacco or other combustible substance or any product in any manner or in any form; and
2. the tenant, occupant, guests or invitees will not carry a lit cigarette, cigar, pipe, or other equipment that burns tobacco or other combustible substance or any product in any manner or in any form.

The addendum also provides:

These terms are material and fundamental to the Residential Tenancy Agreement. Failure to comply with these terms entitled the landlord to end the Residential Tenancy Agreement. The tenant acknowledges receiving a copy of this Addendum.

This addendum was signed by the Tenant and the Landlord’s agent on February 14, 2013.

A second addendum to the tenancy agreement was also provided in evidence, which is entitled, “Residential Tenant Agreement Addendum for Crime Free Housing. This

second addendum was also signed by the Tenant and the Landlord's agent on February 14, 2013.

The Landlord DS and his witness MM gave the following affirmed testimony:

DS testified that in 2013, he received complaints from other occupants in the building regarding the smell of marijuana coming from the Tenant's "walkway window". DS stated that he spoke to the Tenant about the complaints and the Tenant denied that it was him. The Tenant had told him that it was a friend. DS told the Tenant that he was responsible for his friend's actions while he was on the rental property. He said that there were no further complaints for a while, and that the Tenant was moved to another end of the rental property.

DS stated that after the Tenant moved, the Landlords received complaints from other occupants who live directly above and beside the Tenant. DS gave the Tenant another warning notice, and the Tenant again denied that it was him.

The Landlords received a written complaint from the occupant who lives above the Tenant that she could smell cigarette smoke and "pot smoke" coming from the Tenant's apartment, which could be smelled in her home in the kitchen, bathroom, den and bedroom. A copy of an Incident Report signed by the other occupant and received by the Landlords on September 25, 2015, was provided in evidence.

DS testified that during a routine fire inspection of the rental property, it was evident that the Tenant was smoking in his home. The Landlords provided a copy of a "Smoking Final Notice" dated September 29, 2015.

DS testified that he tried hard to work with the Tenant, especially because there are "vulnerable seniors and young children" in the rental property. He stated that the Tenant was seen smoking marijuana in the parking lot of the rental property and in the stairwell. DS stated that since the first Hearing, there have been 2 more complaints about the Tenant smoking pot. DS stated that the Tenant does not have a federal license to smoke marijuana for medical reasons, and that the Tenant's actions put the property at risk for fire, and other occupants' health is at risk.

The Landlords' witness MM testified that on July 21, 2016, she saw the Tenant smoking marijuana in the stairwell, on the second floor by the elevator. MM testified that she has also seen the Tenant smoking in the parking lot at the rental property. She said she knew it was marijuana because she could smell it. MM stated that lives directly above the Tenant. She stated that she has respiratory issues and the smoke comes into her home and makes her sick.

The Tenant and his witness CM gave the following affirmed testimony:

The Tenant denied that he smokes cigarettes or marijuana in the rental property. He stated that he has health issues and that smoke makes him cough.

The Tenant testified that on July 21, 2016, he was climbing the stairs and had to sit down to catch his breath. He stated that he heard MM, and stayed seated on the stairs for a few minutes, but was not smoking.

The Tenant testified that he has a friend who sometimes visits and stays at the rental unit when he has doctor's appointments. The Tenant stated that he was not always home with his friend was visiting and that his friend was apparently smoking while he wasn't home.

The Tenant testified that he can't smoke because of medical issues. The Tenant stated that he is on a "breathing machine". He stated that another neighbor doesn't smell any smoke coming from his suite.

The Tenant's witness CM testified that he has never smelled any smoke, at any time, coming from the Tenant's apartment. CM stated that he lives next door to the Tenant.

Analysis

The Tenant testified that his friend has smoked in the rental unit when the Tenant is not there. The addendum to the tenancy agreement and the Act provide that tenants are responsible for their guest's actions while they are visiting the rental property. The Tenant was warned on numerous occasions with respect to smoking on the property.

The Landlords provided documentary evidence and eye-witness testimony confirming that the Tenant was seen smoking a substance in two different locations at the rental unit. The Tenant's neighbour was not present with the Tenant in the stairway or in the parking lot.

Based on the above, the testimony and evidence, and on a balance of probabilities, I find that the Notice is valid and should be enforced. I find that the Tenant breached a material term of the tenancy agreement that was not corrected after reasonable notice was given. Therefore, **I dismiss the Tenant's Application.**

I find that the Notice was effective August 31, 2016, however the Landlord DS asked for an Order of Possession for January 31, 2017.

The Landlords have been successful in their Application and I find that they are entitled to recover the cost of the \$100.00 filing fee from the Tenant. Pursuant to the provisions of Section 72 of the Act, the Landlords may deduct \$100.00 from the security deposit.

Conclusion

I hereby provide the Landlords with an Order of Possession **effective 1:00 p.m., January 31, 2017**. This Order may be enforced in the Supreme Court of British Columbia.

The Landlords may deduct **\$100.00** from the security deposit, representing recovery of the filing 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: December 06, 2016

Residential Tenancy Branch