



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MT, CNC

Introduction

This hearing dealt with the tenant's Application for Dispute Resolution seeking more time to cancel a notice to end tenancy and to cancel a notice to end tenancy.

The hearing was conducted via teleconference and was attended by the tenant and the landlord's agent.

At the outset of the hearing, I clarified with the tenant that he had received the subject notice to end tenancy on November 28, 2016. From Residential Tenancy Branch records I note the tenant submitted his Application for Dispute Resolution seeking to dispute the notice on December 7, 2016. As this was a 1 Month Notice to End Tenancy, the tenant had until December 8, 2016 to submit this Application.

As a result, I find the tenant does not need more time to submit his Application for Dispute Resolution. Therefore, I amend the tenant's Application to exclude the matter of additional time to dispute a notice to end tenancy.

Residential Tenancy Branch Rule of Procedure 6.1 states disrupting the hearing will not be permitted. The arbitrator may give directions to any person in attendance at a hearing who is rude or hostile or acts inappropriately. A person who does not comply with the arbitrator's direction may be excluded from the dispute resolution hearing and the arbitrator may proceed in the absence of that excluded party.

During the hearing the tenant provided non-responsive answers to my questions; failed to allow me to clarify questions I had for him; and refused to answer several questions. Ultimately, the tenant became argumentative with everything I tried to say. As the landlord had presented her evidence and the tenant had partly responded to the landlord's testimony I found there would be no benefit to simply exclude the tenant, rather I closed the hearing.

I have therefore based this decision on the testimony of both parties to the point where I ended the hearing and the documentary submissions of both parties.

I note that Section 55 of the *Residential Tenancy Act (Act)* requires that when a tenant submits an Application for Dispute Resolution seeking to cancel a notice to end tenancy issued by a landlord I must consider if the landlord is entitled to an order of possession if the Application is dismissed and the landlord has issued a notice to end tenancy that is compliant with the *Act*.

Issue(s) to be Decided

The issues to be decided are whether the tenant is entitled to cancel a 1 Month Notice to End Tenancy for Cause, pursuant to Section 47 of the *Act*.

Should the tenant be unsuccessful in seeking to cancel the 1 Month Notice to End Tenancy for Cause it must also be decided if the landlord is entitled to an order of possession pursuant to Section 55(1) of the *Act*.

Background and Evidence

The parties agreed the tenancy began in May 2015 for a current monthly rent of \$395.00 plus utilities due on the 1st of each month with a security deposit of \$197.50.

Both parties submitted into evidence a document entitled "Rules and Regulations" that listed a number of obligations on the part of the parties for the tenancy including requirements that the yard is to be maintained with the grass mowed, and garbage being the responsible of the tenant.

Both parties submitted into evidence a copy of a 1 Month Notice to End Tenancy for Cause issued by the landlord's agent on November 28, 2016 with an effective date of January 1, 2017 citing the tenant or a person permitted on the residential property by the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property, seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant, or put the landlord's property at significant risk and the tenant or a person permitted on the residential property by the tenant has engaged in illegal activity that has caused or is likely to cause damage to the landlord's property, 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 has jeopardized or is likely to jeopardize a lawful right or interest of another occupant or the landlord. Under details of cause the landlord wrote; "illegal substance on/in the premises" [reproduced as written].

The landlord submitted that due to complaints from neighbouring tenants and receipt of a letter from the local regional district regarding the condition of the residential property, the landlord's agent provided the tenant with a notice of her intent to inspect the property. She provided into evidence copies of the letter received from the regional district and the notice she served to the tenant informing him of her intent to inspect the rental unit.

The landlord's agent also provided copies of two other notices to the tenant. One is dated November 18, 2016 in which she instruct the tenant that they have received a warning from the regional district to clean up the yard and that he must do so before she returns to inspect the property on November 21, 2016.

The second notice is dated November 23, 2016 noting that the tenant has not complied with the requirement set forth in the November 18, 2016 notice and giving the tenant an extension to complete the work until November 28, 2016.

In addition to the concerns raised by the regional district regarding the condition of the yard the landlord testified that when she completed her inspection she found 4 marijuana plants; a box of dried marijuana and two bags of loose direct marijuana. She testified that there was damage to the rental unit including a hole in the wall.

The landlord submitted that since the notice has been issued the tenant has not been staying at the rental unit for some time and she is concerned that, due to a recent cold weather period, pipes and/or the hot water tank may be damaged.

The landlord submitted into evidence a letter of complaint from a neighbour, also a tenant of the landlord, dated November 25, 2016. This letter outlines a number of complaints regarding the tenant's behaviours towards the complainants and their guests including an accusation that the tenant had asked the neighbour's son to start a marijuana grow-operation with him.

When the tenant had not completed the work to clean up the property by November 28, 2016 the landlord served him with the 1 Month Notice to End Tenancy for Cause.

The tenant submitted that the neighbour's complaints should not be considered because they want to see the tenant evicted so they can have family move into this rental unit. The tenant provided no testimony in regard to the condition of the yard.

The tenant testified that the landlord had not tested either the dried material or the plants that she alleges is marijuana and therefore cannot prove that it was. When I asked the tenant directly if it was marijuana he refused to answer.

The tenant also testified that because his physician had prescribed medical marijuana he is allowed to possess it. In support of this position the tenant submitted 2 of 3 pages of a document signed by his physician indicating a need for the tenant to take 6 grams of marijuana per day orally. The tenant did not submit the first page of the document.

I tried to get the tenant to provide clarity on what the document was because it was missing its title page. I advised the tenant that it appeared that the form he had submitted was an application that his physician was required to submit to obtain approval to prescribe medical marijuana to the tenant and not any indication that the tenant was allowed medical marijuana.

The tenant did not comment on the specific form he submitted but stated that his physician did not have to submit any type of application but rather because she was a specialist she simply had to prescribe it. When I continued to question the tenant about the form itself he began to argue with me that I was refusing to accept what the rules set out by Health Canada and that I couldn't do that. I tried to explain, I was trying to understand what this form was but the tenant refused to provide any more responses to my questions and simply argued with me. I note the tenant did not submit any evidence outlining any specific processes or information regarding the approval process for medical marijuana.

Some relevant statements, phrases and clauses from the document he did submit include:

- "The proposed daily amount of dried marijuana....."
- "The following method and form of administration (please check appropriate box)". The options included inhalation and oral – the tenant's physician checked off oral;
- "The applicant's symptom(s) listed in Page 1 of this form falls under Category 2 (symptoms that do not fall under Category 1)";
- "Important
 1. Please ensure that you have read and understood the declarations,
 2. Please sign and date declarations,
 3. It is important to understand that all mandatory information requested must be provided to avoid unnecessary delays,
 4. We cannot process this application until ALL appropriate forms are received;
 5. Please retain a photocopy of this form for your files."

Analysis

Section 47 of the *Act* allows a landlord to end a tenancy by giving notice to end the tenancy if one or more of the following applies:

- a) 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,
 - ii. Seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant, or
 - iii. Put the landlord's property at significant risk;
- b) The tenant or a person permitted on the residential property by the tenant has engaged in illegal activity that
 - i. Has caused or is likely to cause damage to the landlord's property,
 - 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;

While the landlord has raised a number of causes to end the tenancy I note that they need only successfully prove that they have one of the causes listed.

I note the tenant provided testimony in regard to both the issue of the illegal activity regarding marijuana and the neighbour's motives for wanting to see the tenant lose his tenancy. However, the tenant did not provide any written submissions or oral testimony to dispute that the landlord's position that the tenant failed to clean up the property as requested by the landlord's twice before they issued the 1 Month Notice.

I accept that the landlord received a letter from the local municipal authorities advising them that the property was in a condition that violated local bylaws. The letter requested the landlord to contact the authority. I am satisfied that should local authorities enforce the bylaw in a manner that would be at the cost of the landlord or that the landlord could be fined is based on the tenant's failure to comply with his obligations under the agreement between the parties to maintain the yard and the landlord's specific instruction on two occasions to do so.

Therefore, I find that as a result of this the tenant's actions he has seriously jeopardized a lawful right or interest of the landlord. As a result, I find the landlord has established sufficient cause to end the tenancy.

As I have determined the landlord has established one cause sufficient to end the tenancy, I make no findings of fact or law on the issues of illegal activity or the neighbour's complaints.

Based on the above, I dismiss the tenant's Application for Dispute Resolution in its entirety without leave to reapply.

Section 52 of the *Act* requires that any notice to end tenancy issued by a landlord must be signed and dated by the landlord; give the address of the rental unit; state the effective date of the notice, state the grounds for ending the tenancy; and be in the approved form.

I find the 1 Month Notice to End Tenancy for Cause issued by the landlord on November 28, 2016 complies with the requirements set out in Section 52.

Section 55(1) of the *Act* states that if a tenant applies to dispute a landlord's notice to end tenancy and their Application for Dispute Resolution is dismissed or the landlord's notice is upheld the landlord must be granted an order of possession if the notice complies with all the requirements of Section 52 of the *Act*.

Conclusion

I find the landlord is entitled to an order of possession effective **two days after service on the tenant**. This order must be served on the tenant. If the tenant fails to comply with this order the landlord may file the order with the Supreme Court of British Columbia and be enforced as an order of that Court.

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: January 17, 2017

Residential Tenancy Branch