



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC

Introduction

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

- cancellation of the landlord's 1 Month Notice to End Tenancy for Cause (the 1 Month Notice) pursuant to section 47.

Both parties attended the hearing via conference call and provided affirmed testimony. The tenants stated that the landlords were served with the noticed of hearing package and the submitted documentary evidence via Canada Post Xpress Post with a signature requirement on February 8, 2017 and in person on February 22, 2017. The landlords confirmed receipt of the package as claimed by the tenants. The landlords serve the tenants with their submitted documentary evidence by posting it to the rental unit door on February 27, 2017. The tenants confirmed receipt of the package as claimed by the landlords. Neither party raised any issues regarding service of the hearing package or the submitted documentary evidence. As both parties have attended and have confirmed receipt of the notice of hearing package and the submitted documentary evidence of both parties, I am satisfied that both parties have been sufficiently served as per section 90 of the Act.

Issue(s) to be Decided

Are the tenants entitled to an order cancelling the 1 Month Notice?

Background and Evidence

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

Both parties confirmed that this tenancy began on July 1, 2016 on a month-to-month basis and that the monthly rent is \$1,200.00 payable on the 1st day of each month. A security deposit of \$600.00 was paid on June 6, 2016.

The tenant seeks an order to cancel the 1 Month Notice.

On January 30, 2017, the landlord served the tenant with the 1 Month Notice dated January 30, 2017. The 1 Month Notice sets out an effective end of tenancy date of February 28, 2017 and that it was being given as:

- Breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.

The written details on the notice state,

You have been breaching the term no. 1 of the addendum no. 1 to the tenancy agreement to not smoke marijuana in the suite. You had been given a verbal notice in August 2016 and a written notice January 20, 2017 to stop breaching the agreement; however you continued violating the term mentioned above. For more details, please refer to the copies of the addendum and written notice.

A copy of the submitted tenancy addendum states,

1. *Tenants are not allowed to smoke of any kind (Cigarettes, Marijuana, etc.) n the suite or on the premises. This condition also applies to guests visiting tenants.*

A copy of the letter dated January 20, 2017 states,

We would like to bring to your attention that you have been breaching a material term of the tenancy agreement that the tenants are not allowed to smoke (Cigarettes or marijuana) on the premises.

Yesterday around 3:30pm, K. and our children smelled marijuana smell coming from downstairs. When K. check in the laundry room, the smell was very strong. When she knocked at your door to the laundry room, no one answered even through you were home and could hear the TV on. She also left a message for both of you on your phone. There was no return call.

As we mentioned to both of you at the time of signing the tenancy agreement and then again at the incident in August 2016 that K. and our children have hyper sensitivities to cigarette and marijuana smells and it seriously jeopardizes our health not to mention that it is a safety hazard and cause of concern for others residing in the premises.

This is now a second warning, this time in written form and if you continue violating the condition mentioned above, you will be served a 1 month notice to end tenancy.

The tenants disputed the landlords claim and stated that they have never smoked cigarettes or marijuana on the rental property. The tenants claim that the marijuana smell is likely coming from a residual smoke left on the tenants' clothing when he smokes marijuana offsite.

Analysis and Conclusion

Section 63 of the Residential Tenancy Act provides that the parties may attempt to settle their dispute during a hearing. Pursuant to this provision, discussion between the two parties during the hearing led to a resolution. Specifically, it was agreed as follows:

Both parties agreed to mutually end the tenancy on April 30, 2017, by which time the tenants will have vacated the rental unit.

The landlords agreed to withdraw the 1 Month Notice dated January 30, 2017.

The tenants agreed cancel their application to cancel the 1 Month Notice dated January 30, 2017.

The tenants agreed to not possession any illegal substances on the property and when the tenants smoke marijuana, the tenants agree to not bring in the clothing worn after consuming/smoking cigarettes or marijuana.

The above noted particulars comprised a full and final settlement of all aspects of the dispute arising from this application for dispute resolution.

In order to implement the above settlement reached between the parties, I issue an Order of Possession to be used by the landlord if the tenants fail to vacate the rental premises in accordance with their agreement by 1:00 pm on April 30, 2017. The landlord is provided with these orders in the above terms and the tenant(s) must be served with this Order in the event that the tenants do not vacate the premises by the time and date set out in their agreement. Should the tenants fail to comply with this Order, the Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

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: March 08, 2017

Residential Tenancy Branch