



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MT, CNC, LRE

Introduction

This hearing dealt with a tenant's Application for Dispute Resolution (the "Application") under the Residential Tenancy Act (the "Act") for:

- more time to make an application to cancel the landlord's One Month Notice To End Tenancy for Cause (the "One Month Notice");
- cancellation of the landlord's One Month Notice; and
- an order to suspend or set conditions on the landlord's right to enter the rental unit.

The landlord appeared at the teleconference hearing and gave affirmed testimony. The landlord appeared with a witness "A.S." ("Witness A.S.") who also gave affirmed testimony. The tenant appeared at the teleconference hearing and gave affirmed testimony. The tenant appeared with an advocate. During the hearing the landlord and tenant were given a full opportunity to be heard, to present sworn testimony and make submissions. A summary of the testimony is provided below and includes only that which is relevant to the hearing.

Preliminary and Procedural Matters

Rule 2.3 of the Residential Tenancy Branch Rules of Procedure states that, in the course of the dispute resolution proceeding, if the arbitrator determines that it is appropriate to do so, he or she may dismiss the unrelated disputes contained in a single application with or without leave to reapply.

Upon review of the tenant's application I have determined that I will not deal with all the dispute issues the tenant has placed on their application. For disputes to be combined on an application they must be related. Not all the claims on this application are sufficiently related to the main issue relating to the Notice to end tenancy. Therefore, I dismiss the tenant's application for an order to suspend or set conditions on the landlord's right to enter the rental unit with leave to reapply. The leave to reapply is not an extension of any applicable limitation period.

The tenant made her Application to dispute the One Month Notice within 10 days from the date of service of the Notice in accordance with s.47 of the *Act*. Therefore, it is not necessary to consider the tenant's application for more time to make an application to cancel the landlord's One Month Notice. Accordingly, I dismiss this claim.

Issue to be Decided

- Is the tenant entitled to cancellation of the landlord's One Month Notice?

Background and Evidence

The undisputed evidence established that the tenant along with a second tenant entered into a fixed term tenancy starting September 15, 2014 and ending January 15, 2015, with an option to continue the tenancy on a month to month basis. When the second tenant moved out in January 2015, the tenancy agreement was amended to remove the second tenant. Pursuant to the amended tenancy agreement, rent in the amount of \$1,100.00 is due on the first day of each month.

On January 17, 2017 the parties attended a previous hearing that dealt with the tenant's application to cancel a One Month Notice to End Tenancy for Cause dated November 29, 2016. The file number for the previous hearing is indicated on the cover page for ease of reference. The landlord had issued a notice to end the tenancy for several reasons including complaints about the tenant smoking marijuana in the rental unit that disturbed the tenants in the unit below. The One Month Notice was cancelled on the basis that the landlord did not have sufficient evidence to support the complaints. The landlord did not call any witnesses nor submit any witness statements to support her claims against the tenant. In the previous decision, the tenant was cautioned that she now has been given notice that smoking that affects the downstairs tenants will not be tolerated.

The landlord subsequently issued this One Month Notice on January 31, 2017, with an effective date of March 1, 2017. The landlord served the One Month Notice by posting a copy on the door of the tenant's unit on January 31, 2017. The tenant testified that she was away in Kelowna, BC and didn't see the One Month Notice on her door until February 10, 2017.

The reasons for ending the tenancy set out in the One Month Notice is that the tenant or a person permitted on the property by the tenant has:

- Significantly interfered with or unreasonably disturbed another occupant or the landlord.
- Seriously jeopardized the health or safety or lawful right of another occupant or the landlord.
- Put the landlord's property at significant risk.

The complaints by the landlord giving rise to this One Month Notice are as follows:

- the tenant has continued to smoke marijuana in her unit affecting the tenants in the lower unit;
- the tenant has verbally abused other tenants;
- the tenant has turned off the heat to the lower unit affecting the other tenants; and
- the tenant has interfered with the lower tenant's access to the shared laundry facilities.

The landlord testified that she has lost three sets of tenants in the lower as a result of complaints about the tenant's conduct. The landlord indicated that the tenant's conduct has significantly interfered with and unreasonably disturbed the lower tenants causing each set of tenants to end their tenancy.

The landlord submitted a letter from one of the former downstairs tenants dated June 25, 2015 setting out their complaints about this tenant to the landlord. This former tenant resided in the downstairs unit from May 2015 to June 2016. The former tenant complained to the landlord about the noise from the tenant's unit which included fighting, loud music, stomping at all hours and doing laundry as late as 1 a.m. and as early as 5:00 a.m.. The former tenant complained to the landlord that she was losing sleep and didn't feel comfortable or safe in the unit.

In a letter dated January 30, 2017, this former tenant outlined their complaints about the tenant in greater detail. This former tenant indicated that they had to call the police twice in regards to significant fighting coming from the tenant's unit. This former tenant indicated that they had to move as a result of the disturbances. This former tenant also complained about the smell of marijuana coming from the tenant's unit.

The landlord testified that the second set of tenants that resided in the downstairs unit from July 2016 to October 2016 also ended the tenancy due to similar complaints. The landlord did not submit any statements or evidence from these tenants.

The landlord testified that a third set of lower tenants moved in November 15, 2016 and ended their tenancy on February 1, 2016. The landlord testified that Witness A.S. resided in the lower unit with his pregnant girlfriend who subsequently gave birth during the tenancy. Witness A.S. testified that he ended the tenancy as a result of the tenant's conduct which made it intolerable to stay in the rental unit.

Witness A.S. complained about the smell of marijuana from the tenant's unit; that his heat was turned off once or twice by the tenant; and that the tenant prevented access to the shared laundry facilities. Witness A.S. testified that the tenant placed a deadbolt on the laundry room from her side preventing him and his girlfriend from accessing the laundry facilities for a week. Family members of Witness A.S. also submitted letters about the overwhelming smell of marijuana from the tenant's unit that they encountered during visits. Witness A.S. testified that his pregnant girlfriend suffered headaches from the smell of marijuana in their unit. After the birth of their child, Witness A.S. did not want to raise their newborn with the overwhelming smell of marijuana throughout their unit. Witness A.S. testified that they couldn't deal with the smell so they stopped living in the unit on December 1, 2016.

Witness A.S. testified that he returned to his unit on January 12, 2017 and January 17, 2017 and spent a couple of nights there. During these short stays, Witness A.S. indicated that he smelled marijuana coming from the tenant's unit. Witness A.S. also testified that on January 25th and 26th, 2017 he returned to his unit during the day at which time he could smell the odor of marijuana coming from the tenant's unit. Witness A.S. testified that on February 6, 2017 he returned to his unit with his mother to remove his possessions. Witness A.S. testified that he had a cold at the time but that his mother reported that there was a faint smell of marijuana.

The tenant testified that she stopped smoking marijuana in her rental unit sometime before Christmas 2016. The tenant testified that since the previous hearing, the tenant has found alternate medicines for her pain and that she does not smoke marijuana anymore. The tenant indicated that she left for Kelowna on December 24, 2016 and that she didn't return to the rental unit until February 10, 2017. The tenant submitted a flight itinerary in her name showing a one way flight to Kelowna, BC from Victoria, BC on December 24, 2016. The tenant also submitted a boarding pass in her name from Kelowna, BC to Victoria, BC on February 9, 2017. The tenant argued that the allegations by Witness A.S. with respect to the smell of marijuana should not be believed as she was not home during the time period described by the witness.

The landlord testified that she moved into the lower unit on February 17, 2017. The landlord testified that she smelled a strong odor of marijuana coming from the tenant's

unit on February 26, 2017. The landlord also testified that a few weeks prior she had encountered a faint smell of marijuana from the tenant's unit. The landlord testified that the tenant was not being truthful about the times and dates that the tenant claims to have been away.

The tenant testified that after returning from Kelowna, she only returned to the rental unit on February 10, 2017 for one day and then stayed in Victoria, BC. The tenant testified that she stayed in Victoria, BC from February 17, 2017 until February 20, 2017. The tenant testified that she returned to her unit on February 25, 2017 and February 27, 2016. The tenant testified that on February 26, 2017 she received a text message from the landlord complaining about the smell of marijuana but that she wasn't at the rental unit at the time of the complaint. The tenant testified that since the previous hearing she has not breached the prohibition against smoking marijuana in her unit.

The tenant testified that no one else has a key to her unit and that no one else was staying in her unit while she was away.

The tenant acknowledged turning down the heat to minimize her hydro bills as she pays for the hydro. The tenant testified that she was unaware that the heat controls for the upstairs also control the downstairs heat. The landlord testified that the tenant knew at the start of her tenancy that there was only one heat control for both the upper and lower suites.

The tenant testified that she noticed items in her unit go missing and believed that someone was entering her suite through the shared laundry room. The tenant testified that there were signs that the lock on her door had been tampered with. The tenant denies blocking the lower tenant's access to the laundry facilities. The tenant testified that she only secured her door and set up a "booby trap" on her side of the door so she could tell if someone had entered her unit. The landlord testified that the tenant had "booby trapped" the lower tenant's door which she had personally observed.

The tenant is seeking to cancel the landlord's One Month Notice.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows.

I find that there is sufficient evidence that the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord. In making this finding I have

taken into consideration the evidence of the two former tenants who both complained that the tenant's conduct made living in the lower rental unit intolerable. I accept the evidence of both sets of tenants as to their complaints about the tenant. Therefore, I find that the tenant caused intolerable living conditions that resulted in both sets of tenants ended their tenancy.

I find that the tenant was cautioned at the previous hearing that smoking in her unit would not be tolerated. Although the tenant has denied smoking marijuana in her rental unit since having been served with the previous One Month Notice, both Witness A.S. and the landlord testified that they have continued to smell marijuana filtering into the lower unit from the tenant's unit.

While the tenant submitted an itinerary and a boarding pass as proof that she was in Kelowna, BC at the time Witness A.S. claims he smelled marijuana coming from her unit, I find that the itinerary and boarding pass on their own do not establish an airtight alibi independent of the tenant's testimony. I find that these documents establish that the tenant travelled to and from Kelowna, BC on December 24, 2016 and February 9, 2017, but not that the tenant was in Kelowna for one and a half months as she claims. I find that there is insufficient evidence to establish that both flights constituted one round trip. For this reason, I do not accept the tenant's claim that the documents prove that the tenant was not home when Witness A.S. says he smelled marijuana.

The tenant also claims to have not been home at the time the landlord said she smelled marijuana coming from the tenant's unit. To accept the tenant's testimony that she was not home when both the landlord and Witness A.S. said they smelled marijuana would require a finding that both Witness A.S. and the landlord have fabricated their evidence. I am not persuaded that the landlord and Witness A.S. have fabricated their testimony as I find that their testimony is consistent. Both the landlord and Witness A.S. assert that the tenant is not being truthful by claiming that she was away from home on the dates they smelled marijuana from her unit. Based on the foregoing, I find that there is sufficient evidence to satisfy me that the tenant did not refrain from smoking marijuana in her unit after being cautioned not to do so in the previous decision. I find that the smell of marijuana significantly affects the tenants in the lower unit.

As I have found that the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord for the reasons given above, I find that it is not necessary to address the other complaints that the landlord has raised and which the tenant has disputed. Similarly, I find that it is not necessary to address the other reasons set out in the One Month Notice that the landlord has raised and which the tenant has disputed.

I find that the One Month Notice complies with s.52 of the *Act* and that the landlord served the One Month Notice in accordance with the *Act*.

Based upon the foregoing, I find that the tenant is not entitled to cancellation of the One Month Notice and I uphold the Notice to end tenancy. Therefore, I dismiss the tenant's Application.

Pursuant to section 55 of the *Act*, when the landlord's Notice to end a tenancy complies with section 52 of the *Act* and I am dismissing the tenant's Application, I am required to grant an order of possession.

Section 47(2) of the *Act* states that a notice under this section must end the tenancy effective on a date that is:

- (a) not earlier than one month after the date the notice is received, and
- (b) the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.

Section 53 of the *Act* stipulates that if the effective date stated in a Notice is earlier than the earliest date permitted under the legislation, the effective date is deemed to be the earliest date that complies with the legislation.

The landlord indicated that the One Month Notice was served on January 31, 2017 by posting a copy on the tenant's door. Pursuant to Section 90 of the *Act*, the tenant is deemed to have received the Notice on February 3, 2017, three days after it was posted. The tenant indicated that she actually received the One Month Notice upon returning home from Kelowna, BC on February 10, 2017. In either case I find that the One Month Notice was received in the month of February 2017. Therefore, in accordance with sections 47(2) and 53 of the *Act*, I find that the earliest effective date of the One Month Notice is March 31, 2017 and not March 1, 2017. Therefore, I find that the landlord is entitled to an order of possession to take effect two days after service of this Order on the tenant.

Conclusion

The One Month Notice is upheld and the tenancy will end.

Pursuant to section 55 of the *Act*, I grant an Order of Possession to the landlord effective **two days after service of this Order** on the tenant. Should the tenant fail to

comply with this Order, this 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 30, 2017

Residential Tenancy Branch