



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding BROWN BROS. AGENCIES LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC, MT

Introduction

The tenant applies to cancel a one month Notice to End Tenancy for cause dated may 24, 2017 and for more time to do so.

The Notice alleges that the tenant is significantly interfering with or unreasonably disturbing other occupants by smoking marijuana on the balcony of the rental unit and by growing the plant in the rental unit. The Notice also alleges that the tenants are engaged in an illegal activity that has or is likely to adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant. Proof of either of the allegations is a lawful ground for the eviction of a tenant under s. 47 of the *Residential Tenancy Act* (the "Act").

The application has been made by one of the tenants. Both tenants attended.

It is apparent that the landlord is the corporate entity. It was not listed as a respondent landlord in the application. The application has been amended accordingly.

All parties attended the hearing, the corporate landlord by its representative Ms. H., and were given the opportunity to be heard, to present sworn testimony and other evidence, to make submissions, to call witnesses and to question the other. Only documentary evidence that had been traded between the parties was admitted as evidence during the hearing.

Issue(s) to be Decided

Are the tenants or either of them significantly interfering with or unreasonably disturbing other occupants of the building by the use or growing of marijuana? Are they engaged in an illegal activity that is adversely affecting other occupants?

Background and Evidence

The rental unit is a two bedroom apartment in a 75 unit, four storey apartment building.

The tenancy started in September 1998. Currently the monthly rent is \$670.00. The landlord holds a \$272.50 security deposit.

The tenants received the Notice on May 26 and applied to cancel it on May 30, well within the ten day period allowed by s. 47(4) of the *Act*. An extension of time to make the application is not required.

Ms. H. for the landlord presents a series of complaint forms, some filled out by other tenants but mostly by the landlord's building manager, recording complaints. Starting in January 2015 other tenants in the building have complained about the smell of marijuana.

In January 2015 another tenant Ms. A.K. signed a complaint that the smell was aggravating her asthma at that it came from this rental unit.

In August 2016 the building manager recorded a complaint from a rental unit above this one complaining that these tenants were growing a pot plant on their balcony and that they could smell marijuana in their rental unit, on their balcony and in the hallway.

The building manager recorded another complaint in August indicating that the smell of marijuana from the tenants' deck upset another tenant's stomach.

In March 2017 the building manager recorded another complaint from a rental unit above the tenants. The tenants above complained about suffering a rent increase when there had been no action on their earlier complaint and told the building manager that it was common knowledge that the tenants were growing marijuana plants below. The smoke comes up into their apartment in the summer and the winter. They threatened to move.

Also in March 2017 another tenant on the third floor related a complaint to the building manager that the smell of pot is "coming down" from the tenants' unit and she was worried about her three year old smelling it.

Also in March 2017 a different tenant, on the floor below, related a complaint to the building manager that there was a constant smell of marijuana coming from the tenants' apartment in the hallway and a strong smell coming in the back door from the laundry room, "due to smoke coming out of the opening of balcony door."

On March 14, 2017 the landlord wrote to the tenant about the complaints and warning that if there were any further complaints the landlord would issue an eviction notice.

On May 23, the building manager filled out another complaint form indicating a complaint from the tenants above concerning “heavy pot smoke” for three days in a row. They complained that despite the warm weather they could not open their balcony door due to the smoke.

On May 23 the building manager filled out a complaint form indicating that the woman vacuuming the third floor hallway noted the heavy smell of marijuana at the door to this rental unit and that it flooded the whole third floor.

The landlord submitted documentary evidence concerning complaints made after the date of this Notice. It was my determination that the validity of the Notice rises or falls on the state of affairs as they were when the Notice was given. As a result, the later complaints were determined to be not relevant.

Ms. H. notes that the tenancy agreement does not prohibit “smoking” in the rental unit. However, since she began managing the building in 2011 she has tried to limit the smoking of tobacco and other products around the premises. She has posted notices in that regard in the common areas.

The tenants neither smoke tobacco nor drink. Mr. R. B. is 78 years old and has been diagnosed with spinal stenosis, sciatica and chronic pain. He has been given a medical exemption from the law prohibiting the growing and possession of marijuana so that he may ingest it as part of his pain relief. He testifies that he smokes one marijuana cigarette every second day and not on the balcony. He says he has never grown anything in his rental unit.

He disputes that the odour complaints are for any odour coming from his rental unit and says that the complainants are mistaken about the source. He says he has not had an inspection of his suite and has never spoken to the landlord about the complaints.

Analysis

The ending of a tenancy is a very serious matter. In order to establish good grounds for eviction a landlord will be required to present clear and convincing evidence.

The claim of Mr. R.B. that he has a medical marijuana permit was not challenged. I find as a fact that he has such a permit. The landlord’s claim that the tenants are carrying on an illegal activity must fail.

In this case the written, mostly second hand complaints conveyed through the building manager must be contrasted with the tenant Mr. R.B.’s sworn testimony; testimony that was open to challenge by cross examination.

Mr. R.B. wrote in his materials that if he was guilty of something he would like to face and test the credibility of his accusers. While “facing” witnesses is not possible during a telephone conference, questioning them certainly is.

I think Mr. R.B. is right. The landlord has not presented any of the complainants. Their statements and second hand complaints cannot be tested against the tenants’ claim that they are mistaken about the source of the odour nor can it be fairly adjudged whether any interference is significant or any disturbance unreasonable in the circumstances. Their statements do not disclose enough evidence on those points.

In result, the landlord has failed to establish the grounds alleged for the Notice and it is cancelled.

Conclusion

The tenants’ application is allowed. The Notice to End Tenancy dated May 24, 2017 is hereby cancelled.

Mr. R.B. was cautioned that a medical marijuana permit does not give Mr. R.B. the right to smoke it in a manner or to an extent that significantly interferes with or unreasonably disturbs other occupants of the building. If complaints continue to be made the landlord may issue another Notice for incidents arising after this Notice and if the tenants dispute it, the matter will be determined based on the evidence presented at that hearing.

This decision was rendered orally after hearing and 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: August 1, 2017

Residential Tenancy Branch