



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPC

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* ("the Act") for an Order of Possession for Cause pursuant to section 55.

The tenant did not attend this hearing, although I waited until 9:45 am in order to enable the tenant to connect with this teleconference hearing scheduled for 9:30 am. The landlords (applicants) attended the hearing and were given a full opportunity to be heard, to present sworn testimony, and to make submissions.

Landlord L testified that the 1 Month Notice to End Tenancy for Cause ("1 Month Notice") was served to the tenant both personally and by registered mail. Landlord L testified that, after he handed the tenant the notice to end tenancy, the tenant crumpled it up and threw it in the garbage. Landlord C testified that the landlords' Application for Dispute Resolution ("ADR") with Notice of Hearing was served by Landlord L personally and, because the tenant also crumpled up the ADR and threw it in the garbage she sent it and the evidence within her application by registered mail.

The landlords provided copies of the registered mailings for one of the warning letters sent prior to the issuance of the 1 Month Notice, for the 1 Month Notice and for the landlords' ADR with Notice of Hearing. Those Canada Post receipts provided the dates the mailings were sent and that they were not picked up by the tenant. Landlord C testified that all mailings were sent to the tenant's rental unit where he continues to reside. Based on the documentary evidence and undisputed testimony of the landlords, I find that the tenant duly served with the 10 Day Notice on July 7, 2017 (when it was personally served). I find that the landlords' ADR deemed served on August 6, 2017 (5 days after the registered mailing of the ADR).

Issue(s) to be Decided

Is the landlord entitled to an Order of Possession for Cause relating to breach of a material term of the tenancy?

Background and Evidence

The landlords testified that the tenancy began prior to 2007. They testified that, in 2007, they began management of this property and the tenant had already resided there for many years. There is a written tenancy agreement with the tenant's name on it and his original monthly rental amount of \$485.00 payable on the first of each month. The landlords testified that the tenant had not signed the agreement. The landlords testified that the current monthly rental amount of \$520.00 is payable on the first of each month.

The landlords testified that the residential premise is both vacation hotel accommodations for travelers and long-term residential rentals. The landlords testified that the tenant has always been a very good tenant except for an ongoing issue of his marijuana smoking on the property. The landlords testified that they have talked to the tenant on a number of occasions to ask him to cease smoking marijuana on the property. Landlord C testified that the tenant smokes marijuana approximately 3 – 4 times per week and that they have received regular complaints regarding the smoke and smell. The landlords testified that, since the tenant has retired, his marijuana use has increased.

The landlords submitted as evidence for this hearing a copy of two separate warning letters from other occupants on the premises. The landlords both provided other examples of the types of complaints they have received regarding the tenant's marijuana smoking. As the tenant has continued to smoke marijuana on the premises without any heed to the complaints, the landlords testified that they issued a 1 Month Notice to End Tenancy for Cause on the grounds that the tenant has breached a material term of the tenancy. The landlords submitted a copy of the apartment rules and regulations that include term no. 3,

THE TENANT shall not do, or permit to be done, anything which may or can tend to annoy the other Tenants or Landlord. The smoking of MAARIJUANA is forbidden on any part of these premises. The odor bothers some tenants, and the residue left on the walls is impossible to clean ...

The landlords testified that the tenant was provided with a copy of the rules and regulations when they began managing the premises. They testified that he is aware of the rules both because of this notice, postings in the residential premise and because they have discussed this issue with him, verbally and with written warnings numerous times.

The landlords testified that the marijuana smoke and smell bothers long-term occupants and also bothers the hotel guests. They described complaints of the motel guests. They testified that their rental unit is below the tenant's unit and they are personally affected by the smoke and the smell. As well, the landlords testified that their office, also below the tenant's unit often smells of marijuana smoke. The landlords testified that this smell and smoke affects their business by making it seem unprofessional and by creating negative word of mouth about the quality of the stay at the premises.

Analysis

I accept the landlord's documentary evidence including the rules and regulations for the rental premises. I find that the tenant knew or ought to have known that smoking marijuana on the premises is a breach of the rules of the hotel/apartment complex. I accept the landlord's documentary evidence that the tenant was provided with a minimum of 3 warning letters as well as several verbal warnings. I accept the landlords' evidence that the tenant was served with the 1 Month Notice and their Application for Dispute Resolution. I find that the tenant was aware or should have been aware of this hearing date and the nature of the application.

Based on the landlord's undisputed evidence and the documentary evidence provided to support their position, I am satisfied that the landlord had sufficient grounds to issue the 1 Month Notice and obtain an end to this tenancy for cause. The tenant is in breach of a material term of the tenancy as a result of his ongoing marijuana smoking and failure to abide by the warnings issued. The tenant has not made application pursuant to section 47(4) of the *Act* within ten days of receiving the 1 Month Notice. In accordance with section 47(5) of the *Act*, the tenant's failure to take this action within ten days led to the end of his tenancy on the effective date of the notice. In this case, this required the tenant to vacate the premises by August 31, 2017. As that has not occurred, I find that the landlord is entitled to a 2 day Order of Possession

Conclusion

I grant an Order of Possession to the landlord effective **two days after service of this Order** on the tenant(s). Should the tenant(s) 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: October 13, 2017

Residential Tenancy Branch