



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

CNC, FF

Introduction

The tenant has applied to cancel a one month Notice to end tenancy for cause that was issued on September 13, 2017 and to recover the filing fee cost from the landlord.

Both parties were present at the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained, evidence was reviewed and the parties were provided with an opportunity to ask questions about the hearing process. They were provided with the opportunity to submit documentary evidence prior to this hearing, all of which has been reviewed, to present affirmed oral testimony and to make submissions during the hearing. I have considered all of the relevant evidence and testimony provided.

Issue(s) to be Decided

Should the one month Notice ending tenancy for cause issued on September 14, 2017 be cancelled or must the landlord be issued an Order of possession?

Background and Evidence

This tenancy commenced on November 1, 2014; rent is due on the first day of each month.

A copy of the standard Residential Tenancy Branch standard tenancy agreement and a one page; six point addendum was submitted as evidence by the tenant. Clause three of the addendum provides:

“no smoking on property.”

Initially the tenant stated that he had not been given a copy of the addendum. The copy the tenant supplied was attached to the Notice ending tenancy. The tenant went on to state that he was not suggesting that the addendum had not accompanied the original tenancy agreement or that the term had not been agreed to by the parties at the start of the tenancy.

The landlord and the tenant agreed that on September 15, 2017 a one month Notice to end tenancy for cause was served on the tenant indicating that the tenant is required to vacate the rental unit on October 31, 2017.

The reason stated for the Notice to End Tenancy was that:

the tenant or a person permitted on the property by the tenant seriously jeopardized the health or safety or lawful interest of another occupant or the landlord.

The landlord said that at the start of the tenancy the tenant was told the no smoking policy was due to the fact that the landlords' daughter had experienced addiction issues. The landlord told the tenant they had no tolerance for the use of drugs on the property and that any smoking must take place off the property. For the first two years of the tenancy the tenant complied with the no smoking terms.

On December 6, 2016 the landlord issued the tenant a written breach notice due to the tenant's use of marijuana on the property. The letter alleged that the landlord smelled marijuana outside on December 3, 2016. The landlord was furious as the tenant had disregarded their previous conversation regarding smoking and how the family had gone through such a horrible time with drug addiction. The landlord was upset the tenant had ignored their past conversations about the use of marijuana and that the tenant was ignoring the health of the family.

The December 6, 2016 letter included reference to October 16, 2016, when the landlord's daughter smelled marijuana outside; several days later the landlord had asked the tenant about that; the tenant had acknowledged that the landlords' daughter considered herself a recovering addict. The landlord wrote that the tenant had been seen smoking pot outside and was told that the landlord hated pot and was stressed by the use. Then, when asked if he had been smoking marijuana the tenant denied doing so. The landlord told the tenant the last thing they wanted to do was to end the tenancy, as the landlord was well aware of the difficulty this would pose for the tenant. The landlord submits that the tenant was told if they smelled marijuana again the tenant

would be given notice to end the tenancy. The landlord wrote that they felt duped and resentful that the tenant was smoking marijuana.

There was no dispute that the tenant was found smoking a cigar at the front of the house on June 16, 2016. When approached by the landlord the tenant said he thought it was only marijuana that could not be smoked on the property.

On September 11, 2017 the landlord and their family woke up to the smell of marijuana throughout their 2,600 square foot home. The landlord said there was no point in talking to the tenant. The tenant knew he was not to smoke and that their daughter was living in the home. The tenant knew the landlords' daughter had struggled with addiction, yet he failed to cease smoking in the home. Two days later the landlord issued the Notice ending tenancy.

The landlords' daughter said that she used to smoke a lot of marijuana and there was no way that the smell that was throughout the home on the morning of September 11, 2017 was from anything but someone smoking in the home. The smell "reeked" throughout the whole house; even in the bathroom.

The male landlord said he got up to use the washroom in the early hours of the morning and smelled the marijuana.

The landlord said that later in the day on September 11, 2017 the smell of marijuana dissipated in the home. The landlord does not believe that a sealed bag of marijuana could make a 2,600 square foot home smell throughout.

The landlord supplied a letter issued on September 27, 2017 by the family doctor to their daughter. The physician wrote:

"I am the primary care physician for (landlords' daughter) She has had addiction issues in the past and needs a safe home that is drug free. It is unsafe for her mental health to have a cannabis user as a tenant in the home."

(Reproduced as written)

On September 27, 2017 the physician issued a second letter in relation to the female landlord, which in part states:

“...It is of utmost importance that her environment be smoke free and without noxious psychotropic aromas. Emotional upset is to be avoided because of her impaired immune system.”

(Reproduced as written)

The landlord explained that the marijuana smoking has been upsetting and stressful to her. The idea of her daughters' health and well-being placed at risk due to the use of drugs on the property is highly upsetting. The landlord repeatedly commented on the potential risk to their daughter, who views herself as an addict in recovery.

The tenant responded that he did not recall any conversation regarding the landlords' daughter at the beginning of the tenancy. The tenant does recall making the agreement not to smoke on the property. The tenant has a licence to smoke medical marijuana and it was clear there is to be no smoking on the property. The tenant would take his dog for a walk when he smoked.

The tenant initially said on June 16 the landlord found him smoking a joint; the tenant then agreed it was in fact a cigar he had been smoking. The tenant said from that time on he did not smoke on the property.

On September 11, 2017 the tenant was up at 4 a.m. The tenant drives for a government agency and starts work early in the morning. The night prior the tenant had run out of marijuana so the tenant purchased an additional supply, which was in a baggie. The tenant said that this particular marijuana was very “skunky” and had a strong odour. The tenant left the marijuana on the counter when he left for work; he returned home at 1 p.m. When the tenant opened the door to his unit he could smell the marijuana. The tenant said that the bag the marijuana was in was sealed but not fully secure. The tenant said that the strength of the marijuana caused the landlord to be able to smell it throughout the home.

The tenant provided evidence that demonstrated he had worked the morning of September 11, 2017. The tenant stated he would never smoke marijuana and then drive. The tenant said he could lose his job and put his pension at risk.

The landlord said that the tenant had agreed to abstain from smoking on the property yet he chose to do so, knowing rental units can be very difficult to locate. The landlord implied that they did not believe the tenant would not smoke before work, as he was taking the same kind of risk in relation to his rental unit.

The tenant said this all a misunderstanding. The current “batch” of marijuana has been very helpful to the tenant and that he can go three to four days without needing to use the drug.

The landlord said it is unfortunate that the tenancy needs to end as the tenant has not breached the term of the tenancy agreement since the Notice was issued. The landlord said that their extreme dislike of smoking and the risks posed to their family by drug use on the property were intolerable. However, given the tenant’s current abstention, the landlord is willing to accept an end of tenancy effective November 30, 2017.

The Notice ending tenancy included reference to issues related to items stored in a carport. This matter was not dealt with during the hearing; the landlord confirmed that matter was not of importance to the end of the tenancy.

Analysis

From the evidence before me I find that the tenancy included an addendum that prohibited smoking of any kind on the residential property. After initially expressing confusion regarding the term the tenant did acknowledge the existence of the addendum that included the no smoking term.

If the tenant was not previously aware of the landlords’ daughters addiction I find that he was certainly fully aware after receiving the letter issued on December 6, 2016. It is puzzling as to why the tenant would then choose to smoke anything on the property. Yet on June 16, 2017 the tenant smoked a cigar outside the front door. The tenant provided no reasonable explanation for this breach of the terms of the tenancy. The tenant only confirmed knowledge of a marijuana smoking prohibition.

The tenants’ submissions regarding the addendum, confusion regarding the limits of the smoking prohibition and the events that occurred on September 11, 2016 left me questioning the credibility and reliability of those submissions. First the tenant seemed to deny the existence of the addendum by saying he only received a copy when the Notice ending tenancy was served. Then the tenant said he was aware of the addendum at the start of the tenancy. The tenant said he thought he could smoke on the property if the substance was not marijuana yet the December 6, 2016 letter from the landlord starts with a clear statement that “we don’t want smoking here.”

I found the landlords’ testimony absent any malice toward the tenant; which leads to me find that the landlord is simply motivated by the desire to protect the health and safety of

the family. While the landlord “detests” smoking and insists on upholding the smoking prohibition; it is the use of any drug on the property that causes the most upset and concern. As a result I found the landlord’s testimony more credible, genuine and believable than that of the tenant.

I find, on the balance of probabilities that the smell emanating through the landlords’ home on September 11, 2017 could not have originated from a single baggie of marijuana, as the tenant asserts. It is reasonable to accept that the smell might be present in the tenant’s unit; but to accept that the odour of marijuana could spread throughout a 2600 square foot home does not have the ring of truth. I found the tenants’ explanation for the smell of marijuana stretched the bounds of belief. I accept the tenants’ daughters’ assessment of the smell that could be detected in the home. The landlord’s daughter has used marijuana and was confident the smell was caused by smoke.

I have given little weight to the tenants’ submission that he would not smoke marijuana and then go to work. The tenant has smoked on the property when he knew that could place him at risk of losing his home in a very tight rental market; yet he did just that in June 2017. This inconsistency contributed to my assessment of the tenants’ credibility.

I gave the letters from the physician some weight as they related directly to the health of the landlord’s daughter and the female landlord, who are both occupants of the home. It is reasonable for the landlord to expect to provide a residence for their daughter that is free of drug use. The landlord did not say they did not want marijuana on the property or indicate they would deny the tenant the right to use marijuana. It is the fact that the tenant has smoked on the property, contrary to their agreement, that has caused the landlord such stress.

The landlord had insisted, as a term of the tenancy, that the tenant smoke away from the property; a requirement I find the tenant has breached. As a result of this breach I find, on the balance of probabilities, that the tenant has placed the landlords’ daughters’ health at potential serious jeopardy, given the daughters’ risk to relapse. The proximity to drug use has had an effect on the female landlord, who is highly stressed at the risk of relapse posed to her daughter. The tenant was given adequate warning to change his behavior and has failed to take steps to maintain the tenancy.

Therefore; after considering all of the written and oral evidence submitted at this hearing, I find that the landlord has provided sufficient evidence in support of the reason given on the Notice ending tenancy.

Therefore, I find that the tenant's application is dismissed.

Section 55(1) of the Act provides:

55 (1) *If a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, the director must grant to the landlord an order of possession of the rental unit if*

(a) the landlord's notice to end tenancy complies with section 52 [form and content of notice to end tenancy], and

(b) the director, during the dispute resolution proceeding, dismisses the tenant's application or upholds the landlord's notice.

As the tenants' application is dismissed I find pursuant to section 55(1) of the Act that the landlord must be issued an order of possession.

The landlord has been granted an Order of possession that is effective at **1:00 p.m. on November 30, 2017**. This Order may be served on the tenant, filed with the Supreme Court of British Columbia and enforced as an Order of that Court.

Conclusion

The application is dismissed.

The landlord has been issued an Order of possession.

This decision is final and binding 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: October 26, 2017

Residential Tenancy Branch