



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding No 260 SEABRIGHT HOLDINGS LTD
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC, OLC, FF

Introduction

On September 1, 2017, the Tenant submitted an Application for Dispute Resolution asking that a 1 Month Notice to End Tenancy for Cause dated August 25, 2017, (“the 1 Month Notice”) be cancelled and that the Landlord comply with the Act, Regulation or tenancy agreement.

The hearing was scheduled as a teleconference hearing. The Landlord and Tenant appeared at the hearing. The hearing process was explained and the participants were asked if they had any questions. Both parties provided affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and make submissions to me.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issues to be Decided

- Does the Landlord have cause to end the tenancy and is the Landlord entitled to an order of possession?
- Should the Notice to End Tenancy be cancelled?

Background and Evidence

Both parties testified that the tenancy commenced in August 1989 and is a month to month tenancy.

The rental unit is a one bedroom apartment in a multi-unit apartment building with 224 units.

The Landlord testified that she issued two letters to the Tenant regarding complaints she has received from another occupant about her smoking. The Landlord testified that the Tenant did not change her behaviour so a 1 Month Notice To End Tenancy For Cause was issued.

The reasons within the 1 Month Notice are as follows:

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 Landlord has the burden to prove that there is sufficient cause to end the tenancy.

The Landlord testified that the Tenant smokes in the rental unit and it bothers other occupants. The Landlord testified that she asked the Tenant to use an air purifier and to make a seal around her door, but the Tenant refused.

The Landlord testified that the building is in transition to be a non-smoking building since 2012. New Tenants are not permitted to smoke in the rental units; however existing Tenants from before 2012 may smoke in the units.

The Landlord testified that the complaints she has received are from the occupants who live next to the Tenant in unit #2008. The Landlord testified that she has not received any complaints from anyone else. The Landlord testified that she first received complaints from the occupants of unit # 2008 at the beginning of this year. The Landlord provided copies of the written complaints she has received from the occupants of unit 2008. The complaints indicate the occupants are affected by smoke when the Tenant keeps her balcony door open while smoking.

The Landlord testified that she sent the Tenant a warning letter on June 29, 2017, regarding the complaints she received regarding the smoking and she sent a breach letter to the Tenant dated August 1, 2017. A copy of the August 1, 2017, breach letter was provided in the Tenant's documentary evidence. Neither party provided a copy of a June 29, 2017, warning letter. The Tenant testified that she never received the warning letter from the Landlord.

The Landlord testified that she investigated the complaints by entering unit #2008 to see if she could detect any smoke and she could not see any smoke. She testified that she did not observe any second hand smoke coming from the Tenant's unit.

The Landlord testified that she served the 1 Month Notice To End Tenancy For Cause after the occupants of unit # 2008 made a verbal complaint following the issuance of the breach letter to the Tenant. The Landlord had the occupant of unit 2008 present to provide testimony.

The occupant of unit # 2008 testified that he has lived next to the Tenant for 20 years. He testified that he has been putting up with smokers in the building and that the building occupants should comply with the no smoking rule. He testified that his main concern is with building safety. He testified that he stills smells smoke occasionally.

In response to the Landlord's testimony, the Tenant testified that the occupants living next to her in unit #2008 have been harassing her. She testified that they scream at her and ring her doorbell. The Tenant testified that the occupants of unit #2008 knocked on the doors of other occupants looking for them to make complaints about her smoking, but the other occupants refused.

The Tenant testified that the rental building is full of smokers. The Landlord agreed that there are other occupants in the building who smoke in their units.

The Tenant testified that her tenancy agreement permits her to smoke in the unit. She testified that she usually smoked on her balcony or near her balcony; however, as of the beginning of August 2017, she has taken further steps to reduce her any smoke that could bother other occupants. She testified that he has reduced the number of cigarettes that she smokes, and she will often go outside the building to smoke. She testified that when she smokes in the rental unit she now goes into the bedroom which is as far away as possible from the occupants of unit #2008. She testified that she usually has only has two puffs of her cigarette and then stops smoking.

The Tenant testified that other occupants in the building smoke in their units and she has smelled smoke from others while she is in her unit. She submitted that it is possible that smoke from another occupant is reaching the occupants who complained.

The Tenant submitted that she is a good Tenant and she wants the case against her dismissed.

Analysis

In the matter before me, the Landlord has the onus to prove that the reasons listed in the 1 Month Notice are valid.

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

I find that there is no term in the tenancy agreement that prohibits the Tenant from smoking in the rental unit. The Tenant has been smoking in the rental unit since 1989, and there was no testimony or evidence presented that the Tenant's smoking was ever an issue previously. I find that no evidence of a previous concern is particularly relevant because the only occupants who made complaints to the Landlord have lived next to the Tenant for the past 20 years.

I find that there is no evidence before me of written complaints made to the Landlord after the date of the breach letter. The Landlord testified that she issued the 1 Month Notice To End Tenancy For Cause because she received a verbal complaint from the Tenants neighbor after the Tenant was issued the breach letter. The Landlord submitted that the neighbour will provide his testimony; however, the neighbour's testimony on the disturbance and level of disturbances he experienced was vague.

The witness for the Landlord testified that the building is now a non-smoking building and he want the occupants to comply. He stated his main concern is with regard to safety. He stated that he smells smoke occasionally, but he did not specify when he was disturbed or how often he was disturbed, and did not identify where the smoke originated from.

I find that the Tenant's testimony shows that she is alive to the issue of second hand smoke disturbing others as she has taken steps to eliminate or minimize any disturbance to other occupants.

I find that the Landlord has not provided sufficient evidence that the Tenant's smoking has significantly interfered with; unreasonably disturbed; or seriously jeopardized the health or safety or lawful right of other occupants of the building.

In addition there was insufficient evidence from the Landlord regarding the Tenant putting the Landlord's property at significant risk.

I find that the Landlord has not provided sufficient evidence to support the reasons to end the tenancy; therefore, I cancel the 1 Month Notice to End Tenancy for Cause, dated August 25, 2017.

I order the tenancy to continue until ended in accordance with the Act.

Section 72 of the *Act* gives me authority to order the repayment of a fee for an application for dispute resolution. As the Tenant was successful with her application, I order the Landlord to repay the \$100.00 fee that the Tenant paid to make application for dispute resolution. I authorize the Tenant to withhold \$100.00 from one future rent payment.

Conclusion

The Tenant's application is successful. The 1 Month Notice issued by the Landlord dated August 25, 2017, is cancelled.

The tenancy will continue until ended in accordance with the Act.

I authorize the Tenant to withhold \$100.00 from one (1) future rent payment.

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: November 24, 2017

Residential Tenancy Branch