



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, FF

Introduction

On October 20, 2017, the tenant's application was heard, and on October 24, 2017 the Arbitrator issued a decision that dismissed the tenant's application and landlords were granted an order of possession.

On October 26, 2017, the tenant made an application for review consideration, which was granted on the basis that they were unable to attend at the original hearing because of circumstances that could not be anticipated and were beyond their control. The Arbitrator ordered the parties to participate in a new hearing, and the original decision and order were suspended. The arbitrator at the new hearing may confirm, vary or set aside the original decision.

This new hearing dealt with an Application for Dispute Resolution by the tenant filed under the Residential Tenancy Act (the "Act"), to cancel One Month Notice to End Tenancy for Cause, (the "Notice") issued on September 18, 2017.

Both parties appeared, gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions at the hearing.

In a case where a tenant has applied to cancel a Notice, Rule 7.18 of the Residential Tenancy Branch Rules of Procedure require the landlord to provide their evidence submission first, as the landlord has the burden of proving cause sufficient to terminate the tenancy for the reasons given on the Notice.

I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure. I refer only to the relevant facts and issues in this decision.

Issue to be Decided

Should the Notice be cancelled?

Background and Evidence

The tenancy began in 2015. The parties entered into a new fixed term tenancy that commenced on August 1, 2017 and was too expired on July 31, 2018. Rent in the amount of \$2,200.00 was payable on the first of each month. The tenant paid a security deposit of \$1,100.00.

The parties agreed that the Notice was served on the tenant indicating that the tenant is required to vacate the rental unit on October 31, 2017.

The reasons stated in the Notice were that the tenant or a person permitted on the property by the tenant has:

- Has seriously jeopardized the health or safety or lawful right of another occupant or the landlord;
- Put the landlord's property at significant risk;

The tenant or a person that has been permitted on the property by the tenant has engaged in illegal activity that has, or is likely to:

- Damage the landlord's property and
- Jeopardize a lawful right or interest of another occupant for the landlord.

Counsel for the landlord submits that the landlords were informed by the tenant's former girlfriend on September 5, 2017, that the tenant was growing marihuana on the property.

Counsel submits that the landlords attend the property on September 8, 2017, and did not find any marihuana; however, they discovered that the tenant had made alteration to the garage with included making a sealed room, equipped with an exhaust fan, altered electrical and plumbing that was not approved of by the landlord or completed with a permit or inspected. This put the landlord property at significant risk.

Counsel submits the tenant was given an opportunity to remove the modifications made to the property and restore the garage back to the original condition by September 30, 2017.

Counsel submits on September 30, 2017, they had a person attend the property for the purpose of inspecting the garage, which the modification were not removed. Filed in evidence is an affidavit of AM.

Counsel submits that when the garage was inspected on September 30, 2017, attached to the garage was a registration certificate for growing marihuana. Counsel submits the license was not for the subject property.

Counsel submits that due to the tenant having made modification to the landlords property that were not permitted has put the landlords insurance policy at risk, and this seriously jeopardized

the landlords lawful rights and interest. Filed in evidence is a letter from the landlord's insurance company.

Counsel submits that tenant's action is also a violation of several laws and regulation, all of which put the landlord property at serious financial risk.

The tenant testified that they did not have the landlords consent to make alterations to the property; however, they have made other alteration to the property such as installing a hot tub that the landlords had no issue with and they do not see why this as an issue, except that the landlords do not approve of them growing marihuana..

The tenant testified that they did make a sealed room for the purpose of growing marihuana in the garage; however, it was made properly and would not cause damage to the property or have any impact within the rental unit.

The tenant testified that although the landlords did not consent to them growing marihuana they have recently have obtain a new license to grown marihuana for the subject property as this is their primary residence.

Counsel argues that in order for an applicant applying for a license to grown marihuana, they must have the consent of the owner. Filed in evidence is a copy of the Access to Medical Marihuana Regulations.

Counsel submits the landlords did not to consent, nor will have the landlords consent for the property to be used to produce marihuana.

Analysis

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

How to end a tenancy is defined in Part 4 of the Act. Section 47(1) of the Act a landlord may end a tenancy by giving notice to end the tenancy.

I have considered all of the written and oral submissions submitted at this hearing, I find that the landlords have provided sufficient evidence to show that the tenant has:

- Has seriously jeopardized the health or safety or lawful right of another occupant or the landlord; and
- Put the landlord's property at significant risk;

The tenant or a person has permitted on the property by the tenant has engaged in illegal activity that has, or is likely to:

- Damage the landlord's property and
- Jeopardize a lawful right or interest of another occupant for the landlord.

First, I find making alterations to the landlord property by installing a hot tub, without their consent, although subsequently approved by the landlord, is not within the same ramification as modifying the rental premises for the purpose of growing marihuana.

In this case, the tenant has made modification to the landlords' property, by sealing off a portion of the garage, altering the electrical systems and plumbing for the sole purpose of growing marihuana. The tenant did not have the landlords consent to make these modifications, nor were these modifications completed with permits. The landlords gave the tenant the opportunity to remove the modification; however, the tenant declined to do so. I find the tenant's action has seriously jeopardized the lawful rights of the landlords and has put the property at significant risk.

Although no marihuana was found on the site at the time of the inspection, it was reported to the landlords that the premises was being used as a marihuana grow operation, which was not unfounded as the tenant had modified the garage, and posted their registration certificate that they were entitled to grow marihuana. This seriously jeopardizes the landlords lawful rights and interest, as the landlords insurance is at risk and they are now required to disclose this to all potential buyers that the premises was used as a grow operation.

Further, I find the tenants action of posting a registration certificate, which shows the tenant is entitled to grow 30 marihuana plants was an attempt to mislead any person attending or inspecting the rental property, as this registration certificate was not valid for this location.

Further, I find that even if the tenant has recently obtained a recent registration certificate for the subject property to produce marihuana, I find that is more likely than not that the registration certificate was obtained by fraud, because under 117 (7) of the Access to Cannabis for Medical Purposes Regulations, if the proposed site for the production of marihuana plants is not owned by the applicant, the application must include the given name, surname, address and telephone number of the owner of the site and a declaration signed and dated by them consenting to production at the site and all evidence support the landlords did not consent or sign a declaration.

In light of the above, I find the Notice issued on September 18, 2017, has been proven by the landlords and is valid and enforceable. Therefore, I dismiss the tenant's application to cancel the Notice. I find the tenancy legally ended on October 31, 2017, which is the effective date of the Notice. I find the tenant is now overholding the premises.

Since the tenancy legally ended on the effective date of the Notice, I find the landlord is entitled to an order of possession, pursuant to section 55 of the Act, effective **two days** after service on the tenant.

Since the tenant was not successful with their application, I find the tenant is not entitled to recover the filing fee from the landlords.

Conclusion

The original decision and order dated October 26, 2017, are set aside and replaced with this decision and order.

The tenant's' application to cancel the Notice, issued on September 18, 2017, is dismissed.

The landlords are granted an order of possession.

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 29, 2017

Residential Tenancy Branch