



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Macdonald Commercial Real Estate Services Ltd.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC PSF FF

Introduction

This hearing was convened as a result of the Tenant's Application for Dispute Resolution. A hearing by telephone conference was held on March 29, 2018. The Tenant applied for multiple remedies pursuant to the *Residential Tenancy Act* (the "Act").

The Landlord was represented at the hearing by an agent, D.A, (the "Landlord"). The Tenant attended the hearing on his own behalf. All parties were provided the opportunity to present evidence orally and in written and documentary form, and to make submissions to me.

The Landlord acknowledged receipt of the Tenant's application and evidence package. The Landlord stated that he sent the Tenant a copy of his evidence by registered mail on March 12, 2018, addressed to the rental unit. The Tenant stated that he never got the package. The Landlord stated that he checked the delivery status online and it indicated that there were several delivery attempts but the Tenant never accepted it, nor did he pick it up from the postal depot. Even though the Tenant did not go to pick up the registered mail package, I find it is deemed served 5 days after it was sent to the rental unit, pursuant to section 88 and 90 of the Act. I find the Landlord has sufficiently served the Tenant with his evidence and this evidence will be considered in this review.

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

Preliminary and Procedural Matters

The Tenant applied for multiple remedies under the *Act*, a number of which were not sufficiently related to one another.

Section 2.3 of the Rules of Procedure states that claims made in an Application must be related to each other and that arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply.

After looking at the list of issues before me at the start of the hearing, I determined that the most pressing and related issues deal with whether or not the tenancy is ending. As a result, I exercised my discretion to dismiss all of the grounds on the Tenant's application, with leave to reapply, with the exception of the following claim:

- to cancel the 1 Month Notice to End Tenancy for Cause.

Issues(s) to be Decided

- Is the Tenant entitled to have the Landlord's Notice cancelled?
 - If not, is the Landlord entitled to an Order of Possession?

Background and Evidence

Both parties provided documentary evidence and oral testimony. Much of the testimony provided by both parties was conflicting and difficult to resolve, without further evidence. In this review, I will not summarize and address all evidence and testimony. However, I will focus on the facts and evidence which underpin my findings.

The Tenant acknowledged receiving the Notice on January 30, 2018. This Notice was issued for Cause as follows:

The 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.*

During the hearing, the Landlord stated that the Notice was issued because of an issue with the Tenant smoking. The Landlord stated that this issue has been ongoing for quite

some time now. The Landlord stated he has received several complaints about the Tenant's smoking over the last year or so. The Landlord stated that the Tenant's neighbor has been significantly impacted by all the second hand smoke coming from the Tenant's rental unit.

The Landlord stated that the person living in the unit next to the Tenant has complained many times over the years regarding the smell of cigarette smoke coming from the Tenant's rental unit. The Landlord provided a series of email complaints received from the Tenant's neighbor dating back to February 2017. The person living next to the Tenant expressed that the second-hand smoke is so strong that it is impacting their breathing. The Tenant's neighbor stated that their unit is "truly unlivable" because of how strong the smell is. The Landlord provided copies of warning letters they issued to the Tenant in July and August of 2017 regarding the second-hand smoke.

The Landlord stated that the complaints have continued to come in even after the warning letters were issued. The Landlord provided a copy of an email from the person living in the unit next to the Tenant and they indicated that they saw the Tenant sitting inside his balcony door, smoking, around October 15, 2017. The Landlord stated that whenever he has gone near the Tenant's unit, the smell of smoke is quite intense.

The Tenant stated that he mainly smokes out on his balcony, and since his warning letters, he has attempted to minimize the impact on neighbors. The Tenant stated that he hasn't smoked inside his rental unit for quite some time now, and will go out on his balcony. The Tenant stated that the other neighbor who lives on the other side of him does not complain of the smell.

Analysis

The Landlord issued the Notice for several reasons. However, in this review, I will only address the facts and evidence which underpin my findings and will only summarize and speak to points which are essential in order to determine whether there are sufficient grounds to end the tenancy.

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

First, I turn to the following ground on the Notice:

The Tenant or a person permitted on the property by the Tenant has:

- *Significantly interfered with or unreasonably disturbed another occupant or the Landlord*

The documentary evidence and testimony provided by the Landlord shows that the person living in the unit next to the Tenant is being unreasonably disturbed by the smell of second-hand smoke. The Tenant admits that he smokes and has done his best to minimize the impact on others, since he got his warning letters last summer. However, it is clear that at least one other occupant in the building is being disturbed by the frequency and quantity of cigarette smoke coming from the Tenant. The person living next to the Tenant has stated that it is nearly unlivable due to the smell of smoke, and this has been going on far too long.

Although the Tenant stated that he has been smoking on his balcony, rather than in his unit, to help mitigate the impacts on others. I find the evidence and testimony from the Landlord indicates that at least one other occupant in the building is being significantly interfered with or unreasonably disturbed. After continuing to receive complaints, even after warning letters, the Landlord issued the Notice.

Ultimately, I find there is sufficient evidence to show that another occupant has been unreasonably disturbed by the Tenant's smoking and I find the Landlord had sufficient grounds to issue the Notice. The Tenant's application to cancel the Notice is dismissed. The tenancy is ending. Having made this finding, it is not necessary for me to consider the other ground indicated on the Notice.

Under section 55 of the *Act*, when a tenant's application to cancel a Notice to end tenancy is dismissed and I am satisfied that the Notice to end tenancy complies with the requirements under section 52 regarding form and content, I must grant the landlord an order of possession.

I find that the Notice complies with the requirements of form and content. The landlord is entitled to an order of possession.

As the tenant was not successful with his application, I dismiss his claim to recover the cost of the filing fee.

Conclusion

The Tenant's application to cancel the 1-Month Notice to End Tenancy for Cause is dismissed. Further, I dismiss the tenant's request to recover the cost of the filing fee.

The Landlord is granted an order of possession effective **two days after service** on the Tenant. This order must be served on the Tenant. If the Tenant fails to comply with this order the Landlord may file the order with the Supreme Court of British Columbia and be enforced as an order of that Court.

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: March 29, 2018

Residential Tenancy Branch