



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the tenants filed under the Residential Tenancy Act (the "Act"), to cancel 1 Month Notice to End Tenancy for Cause, (the "Notice") issued on December 22, 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.

The parties confirmed receipt of all evidence submissions and there were no disputes in relation to review of the evidence submissions.

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 on October 10, 2017. Rent in the amount of \$1,800.00 was payable on the first of each month. Filed in evidence is a copy of the tenancy agreement.

The parties agreed that the Notice was served on the tenants indicating that the tenants are required to vacate the rental unit on January 31, 2018.

The reason stated in the Notice was that the tenants have:

- significantly interfered with or unreasonably disturbed another occupant or the landlord;
- put the landlord's property at significant risk; and

- breached of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do.

Counsel for the landlord submits that the tenants have breached a material term of the tenancy agreement that was not corrected. Counsel submits the tenancy agreement prohibits smoking in the rental unit or anywhere on the property. Counsel submits the tenants breached this agreement by smoke cigarettes and marihuana in the rental unit.

Counsel submits that the tenants' lied to the landlord when the landlord asked the tenants' if they were smokers and they said they were not. Filed in evidence is text messages which confirm the tenant stated they do not smoke.

Counsel submits that shortly after the tenants moved into the rental unit the landlord started to receive complains from the occupant in the lower unit that cigarette and marihuana smoke was entering their unit through the air ducts. Filed in evidence are letters of complaints.

Counsel submits the landlord was on the property fixing a door and they could smell smoke and marihuana. Counsel submits the landlord attempted to speak to the tenants regarding this issue; however, the tenants would not respond to their text message. Filed in evidence are text messages.

Counsel submits the landlord sent the tenants a letter by registered mail indicated that smoking must stop as they are in breach of the tenancy or they would be ending the tenancy. Counsel submits the tenants did not pick up the package, even when they were notified by the landlord that it was coming. Counsel submits the tenants were deemed served on December 12, 2017.

Counsel submits that because the tenants were not co-operating when the landlord was attempt to ensure they were not smoking as they were still receiving complaints for the lower occupant.

Counsel stated that the landlord found cigarette ash on the tenants' balcony and the landlord hired an independent air quality expert to attend the premises; however, the tenants would not answer the door to let them in. Counsel submits the expert did the testing from the lower unit and it was determined in the report that there was a strong smell of marihuana entering the lower unit. Filed in evidence is a copy of the expert report.

The tenants testified that they did lie to the landlord about smoking as they did not want to be discriminated for this habit.

The tenants testified that they did not receive the written warning in the mail as it was sent to the community mail box, which they do not check.

The male tenant testified that they smoke marihuana but not in the rental unit and the smell is simply from the flower and some of the marihuana is wet and has a strong smell.

The tenants testified that they never have smoke in the rental unit or anywhere on the property.

Analysis

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

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

- breached of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do.

In this case the tenants signed a tenancy agreement that there is no smoking in the rental unit or on the property. The tenants purposely gave false information to the landlord when they were asked prior to entering into the agreement if they smoked.

Shortly after the tenancy commenced, the landlord received complaints from the occupant in the lower level that the upstairs tenants were smoking. The landlord also witnessed the smoke and the smell of marijuana when they attended the property.

The landlord attempted to resolve this matter with the tenants; however, the tenants refused to respond to the landlord's text message. On December 9, 2017, the tenants were sent a registered letter that was returned unclaimed. The tenants knew by the text message that the letter had been sent. Simply not checking the mailbox does not override the deemed services provision of the Act.

Further, the landlord hired an air quality expert to investigate. The tenants did not answer their door when the expert arrived. The expert did the testing from the lower unit, which they determined a strong smell of marijuana was entering into the unit.

I do not accept the tenants' evidence that simply having marijuana in your possession would cause such a smell that it would interfere with another occupant's rental unit and even if it does, which I do not accept, it is their responsibility to ensure the smell does not interfere with another occupant.

I further find the tenants' actions of lying to the landlord, not responding to the landlord's concerns, not picking up their registered mail and not allowing the air expert to do testing in the rental unit can only lead me to believe the tenants were smoking.

I am satisfied that the tenants breached a material term of the tenancy.

I find the Notice issued on December 22, 2017, has been proven by the landlord and is valid and enforceable. Therefore, I dismiss the tenant's application to the Notice issued on December 22, 2017. The tenancy will end in accordance with the Act.

As the tenancy legally ended on the effective date of the Notice which was January 31, 2018, 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 tenants

Conclusion

The tenants' application to cancel the Notice, issued on December 22, 2017 is dismissed. The landlord is 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: March 01, 2018

Residential Tenancy Branch