



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC

Introduction

This hearing dealt with a tenant's application to cancel a 1 Month Notice to End Tenancy for Cause. Both parties appeared or were represented at the hearing and were provided the opportunity to make relevant submissions, in writing and orally pursuant to the Rules of Procedure, and to respond to the submissions of the other party.

The landlord had a witness present at the start of the hearing. The witness was excluded from the hearing until such time he was called to testify.

The landlord had uploaded photographic evidence and an audio recording to the Residential Tenancy Branch service portal but did not serve this evidence to the tenant. Rather, the landlord only provided the tenant with a listing of the electronic file names of uploaded evidence. I informed the parties that I would not view or listen to evidence not served upon the other party as it would be unfair to do so but that I would consider oral evidence of the parties and witness testimony. The landlord stated she wished to proceed with oral evidence only.

The hearing process was explained to the parties and the parties were provided the opportunity to ask questions.

Issue(s) to be Decided

Has the landlord proven that the tenancy should end for the reasons indicated on the 1 Month Notice to End Tenancy for Cause?

Background and Evidence

Although I was not provided a copy of a written tenancy agreement, both parties were in agreement that a written agreement was executed. The parties provided consistent testimony that the tenancy started on November 2, 2017 and the tenant is required to pay rent of \$850.00 on the last day of every month. The parties were also in agreement that there is a term in the tenancy agreement that prohibits the tenant from smoking cigarettes, marijuana or another other drugs in the rental unit or on the patio. The rental unit is one of two basement suites on the property. The landlord and her family reside in the main unit above.

On December 31, 2017 the landlord personally served the tenant with a 1 Month Notice to End Tenancy for Cause with a stated effective date of January 31, 2018 (the "1 Month Notice"). On the second page of the 1 Month Notice the landlord indicated the following reasons for ending the tenancy:

- Tenant or person permitted on the property by the tenant has put the landlord's property at significant risk; and,
- Tenant knowingly gave false information to prospective tenant or purchaser of the rental unit or property.

In the details of cause space on the 1 Month Notice, the landlord wrote:

Smokes tobacco in the house and it is dangerous for our children.
She argues a lot and does not comply with the rules.
Police have come several times.

The tenant filed to dispute the 1 Month Notice within the time limit for doing so.

The landlord testified that the tenant complains about the other tenant who resides in the adjacent basement suite (who is also the witness called during the hearing). The landlord stated that she got tired of all of the tenant's complaints and then the landlord started to smell smoke in the house. On November 15, 2017 the landlord went to deliver mail to the tenant and when the tenant opened the door the rental unit was full of marijuana smoke. When the landlord complained to the tenant about smoke the tenant claims that it is coming from the other tenant and the landlord's son smoking on the property. The landlord believes the tenant's friend also smokes marijuana in the rental unit. The landlord suspects that marijuana is being smoked in the bathroom of the rental unit because the fan is often running and the landlord's hydro bill has increased

significantly. The landlord also states that there is an odor of air freshener in the laundry room that the landlord finds bothersome. The landlord submits that the smell of smoke and air fresheners is hazardous to the health of the landlord and her family.

The tenant acknowledged that she smokes cigarettes but claims she does so on the street and not in her unit or on the property. The tenant denied that she or her friend smoke marijuana in the rental unit. The tenant acknowledged that the landlord has complained several times to her about the smell of smoke and in response the tenant tells the landlord that it is from the other tenant and/or the landlord's son. The tenant also acknowledged that the landlord has complained about the tenant using a fan in the rental unit because it costs a lot of money in hydro so she starts spraying air freshener. The tenant agreed that the police have been called to the property on a number of occasions including the landlord calling the police about her smoking.

The landlord's witness was called to testify. The witness testified that he and the tenant smoked cigarettes together under the foyer on the property on very rainy or cold days a few times but that he did not see the tenant smoke cigarettes on the property at any other time. The witness acknowledged that he had been smoking on the property a number of times but that more recently he has been smoking on the street because the landlord has asked him to do so; however, he did not get an eviction notice for smoking on the property. The witness stated that he has smoked marijuana in the tenant's bathroom approximately three times. The witness stated the tenant called the police on him when she was upset that he would not help her get marijuana, claiming he was suicidal, when he was not. The witness also stated that the tenant's friend confronted him a couple of weeks ago.

In response to the witness's testimony the tenant acknowledged that she had smoked with the witness in the entry way by their units but claimed this was because the landlord said it was acceptable to do so during bad weather and that when the weather was better she had to smoke further away. The tenant stated that occurred before she located her tenancy agreement. The tenant denied smoking marijuana with the witness or a friend in her bathroom. The tenant acknowledged she called the police on the witness because he said he would hurt others and himself if she told the landlord that he was smoking on the property.

The landlord submitted that prior to the tenant moving in there were no issues with the other tenant or smoking on the property.

Analysis

Where a Notice to End Tenancy comes under dispute, the landlord has the burden to prove, based on a balance of probabilities, that the tenancy should end for the reason(s) indicated on the Notice.

The 1 Month Notice that is the subject of this dispute indicates the tenant has put the landlord's property at significant risk. I was not provided sufficient evidence to demonstrate the property is at significant risk by the actions or neglect of the tenant or the persons she permits on the property. Although the landlord alleged the tenant is smoking in the rental unit or on the property the landlord did not demonstrate that doing so puts the property at significant risk. Therefore, I find this stated reason has not been proven by the landlord.

The 1 Month Notice also indicates the tenant has knowingly given false information to a prospective tenant or purchaser of the property. I did not hear any evidence that there was a prospective tenant or purchaser viewing the property or that the tenant communicated with such a person. Therefore, I find this stated reason has not been proven by the landlord.

In the details of cause, the landlord indicates the tenant is 'smoking tobacco in the house'. Since "smoking tobacco in the house" was clearly indicated in the details of cause, I considered amending the Notice to indicate one of the reasons for ending a tenancy as provided under section 47 of the Act as follows.

Smoking in the rental unit or on the property would appear to be a breach of a term in the tenancy agreement based on what the parties told me. However, I was not provided evidence that the landlord gave the tenant a written letter to put the tenant on notice that she was in breach of a material term of her tenancy agreement. Accordingly, I do not further consider ending the tenancy due to: *Breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.*

Also smoking tobacco in the house could be indicative of an unreasonable disturbance to other occupants of the property or could seriously jeopardize the health of other occupants of the property. I have considered whether there is insufficient evidence to demonstrate that the landlord or other occupants of the property have been unreasonably disturbed or the health or safety of other occupants has been seriously jeopardized by the tenant smoking tobacco in the house.

The landlord states that she smells smoke in the house and that this must be from the tenant since there were not issues with smoke smell before she moved in. The tenant denied that she is smoking in the house and the landlord's witness testified that both he and the tenant smoked under the foyer but that he had no knowledge of the tenant smoking tobacco in the rental unit. The tenant also testified that the landlord's son has smoked on the property. I find the opposing oral evidence to be insufficient evidence to conclude that the tenant has smoked tobacco in the house and that doing so has unreasonably disturbed or seriously jeopardized the health of other occupants.

As for the landlord's other reasons indicated in the details of cause, I find those reasons are not a basis under the Act to end the tenancy, inadequately explained or insufficiently supported. For instance, approaching the landlord to make a complaint about another tenant is not a basis for ending the tenancy. The landlord referred to the tenant not following "rules" but did not provide a copy of the tenancy agreement or specify the rules she was referring to with the exception of smoking tobacco in the house which I have addressed above. Finally, I heard that the police have been called to the property by both the tenant and the landlord and this does not form a basis to end the tenancy.

In light of the above, I find the landlord did not provide sufficient evidence to establish a basis for ending the tenancy for one of the reasons indicated on the 1 Month Notice. Accordingly, I grant the tenant's request that I cancel the 1 Month Notice and the tenancy continues at this time.

Under section 62(3) of the Act, I have the authority to issue any order to a party to ensure compliance with the Act, regulations or tenancy agreement. I find it appropriate to issue the following ORDER to the TENANT:

I ORDER that the tenant MUST NOT smoke any substance, including tobacco or marijuana, anywhere on the residential property. The tenant is also responsible for ensuring any person she permits on the property does not smoke anywhere on the residential property. This order is effectively immediately upon receipt of this decision by the tenant.

Should the tenant violate the above order the landlord may issue a 1 Month Notice to End Tenancy for Cause under section 47(1)(l) of the Act which permits a landlord to end a tenancy where the tenant has not complied with an order of the director.

With a view to avoiding future disputes, I suggest to the tenant that she refrain from spraying air fresheners in the rental unit now that she is aware it is bothersome to the landlord and that she use the fans in the rental unit as appropriate during cooking and bathing activities.

Conclusion

The 1 Month Notice dated December 31, 2017 is cancelled and the tenancy continues at this time.

I have issued an Order to the tenant with this decision.

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 08, 2018

Residential Tenancy Branch