



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding PEMBERTON HOLMES LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC, FFT

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- cancellation of the One Month Notice to End Tenancy for Cause, pursuant to section 47; and
- repayment of the filing fee, pursuant to section 72.

Both parties attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

Articled student L.H. testified that the tenant mailed or couriered the dispute resolution application to the landlord but was not sure on what date. The property manager (the "landlord") testified that she received the tenant's application via registered mail but did not know on what date. I find that the landlord was served with this package in accordance with section 89.

The landlord testified that the tenant was served the landlord's evidence package via registered mail on June 12, 2018. The tenant testified that he received the landlord's evidence package on June 15, 2018. The landlord provided the Canada Post Tracking Number to confirm this registered mailing. I find that the landlord's evidence package was served in accordance with section 88 of the *Act*.

I note that Section 55 of the *Act* requires that when a tenant submits an Application for Dispute Resolution seeking to cancel a notice to end tenancy issued by a landlord I must consider if the landlord is entitled to an order of possession if the Application is

dismissed and the landlord has issued a notice to end tenancy that is compliant with the *Act*.

Issue(s) to be Decided

1. Is the tenant entitled to cancellation of the One Month Notice to End Tenancy for Cause, pursuant to section 47 of the *Act*?
2. If the tenant's application is dismissed, is the landlord entitled to an Order of Possession, pursuant to section 55 of the *Act*?
3. Is the tenant entitled to repayment of the filing fee, pursuant to section 72 of the *Act*?

Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of both parties, not all details of their respective submissions and arguments are reproduced here. The relevant and important aspects of the tenant's and landlord's claims and my findings are set out below.

Both parties agreed to the following facts. This tenancy started January 15, 2017 and is currently ongoing. Monthly rent in the amount of \$1,664.00 is payable on the first day of each month. A security deposit of \$800.00 was paid by the tenant to the landlord. A written tenancy agreement was signed by both parties and a copy was submitted for this application.

The landlord testified that on April 18, 2018, the tenant was mailed and e-mailed a notice of annual inspection of the property to be conducted May 2, 2018. The tenant testified that he did not receive the notice of annual inspection.

The landlord testified that on May 2, 2018 an inspector entered the rental property to complete the annual inspection, and at that time found a number of small marijuana plants growing in a bedroom closet and approximately 25 large marijuana plants in the basement. The landlord submitted photographic evidence depicting large fully-grown marijuana plants located in the basement. The growing area was enclosed by large plastic sheeting. A hose from inside the growing area vented into the rest of the basement. The photographs show large lights hanging from the ceiling over top of the plants.

The landlord testified that the police were then called and informed of the marijuana grow operation. The landlord provided the police file number, the constable's name and badge number. The landlord testified that police attended at the property and the tenant was issued a warning.

The landlord testified that after the inspector reported the marijuana growing operation in the basement, she informed the owner of the rental property of same and that the owner requested the One Month Notice be sent to the tenant.

The assistant property manager testified that on May 4, 2018 she served the tenant with the One Month Notice. The assistant property manager provided the Canada Post Tracking Number to confirm this registered mailing. The tenant confirmed receipt of the One Month Notice on May 9, 2018. I find that the tenant was served with this package on May 9, 2018, in accordance with section 88 of the *Act*.

The Once Month Notice provides the following reasons for ending the tenancy:

- Tenant or a person permitted on the property by the tenant has put the landlord's property at significant risk, pursuant to section 47(1)(d)(iii); and
- Tenant or a person permitted on the property by the tenant has engaged in illegal activity that has, or is likely to damage the landlord's property, pursuant to section 47(1)(e)(i);

The landlord testified that the entire house smells of pot and that she is concerned about the ventilation and electrical work that has been done in the rental property. The landlord testified that there is no proper ventilation in the basement and is very concerned with moisture and condensation levels. The landlord further testified that she does not currently know the extent of the damage as the tenant is still residing in the property.

The tenant testified that he thought that if he had a prescription for marijuana and applied for a license to grow marijuana he was permitted to grow marijuana before he was granted the license. The tenant testified that he has not yet received a license to grow marijuana from any government. The tenant testified that when he learned that he needed an actual license to grow marijuana, he removed all the marijuana plants from the rental property. The tenant testified that currently there are no marijuana plants in the rental property.

The tenant testified that his room-mate, who knows how to grow marijuana, helped him set up his growing operation. The tenant testified that the growing room was properly

vented out a window. The tenant further testified that his friend was not a trades person but had built growing rooms in the past.

The tenant testified that a friend of his came and checked the electrical work he had completed for his growing room and told him it was safe. The tenant testified that he did not know if his friend was a licensed electrician. The tenant further testified that he did not check with the city to see if any permits were required for the alterations he was making to the rental property and he did not pull any permits for said work or seek permission for the work from the landlord.

Analysis

Section 47(1)(d)(iii) of the *Act* states that a landlord may end a tenancy by giving notice to end the tenancy if the tenant or a person permitted on the residential property by the tenant has put the landlord's property at significant risk.

The tenant admitted to setting up a marijuana growing room inside the basement of the rental property. The tenant testified that he did not pull any permits or hire any licensed tradespersons or electricians to complete the work in question. The tenant testified that the growing room was vented outside of the property; however, the photographic evidence provided by the landlord clearly shows at least one hose venting inside the basement. I find that at least one hose in the growing room vented into the basement. I find that venting the growing room inside the basement posed a serious risk to the landlord's property.

I also find that the unlicensed electrical alternations done to the rental property by the tenant, has put the landlord's property at significant risk. Whether or not damage has actually occurred, does not negate the risk the tenant posed to the landlord's property by completing unpermitted electrical work by unqualified individual(s).

I find that the tenant has breached section 47(1)(d)(iii) of the *Act* and that the landlord was entitled to issue the tenant the One Month Notice. I find that the One Month Notice is upheld; therefore, I dismiss the tenant's application to cancel the One Month Notice.

I find that since the tenant was unsuccessful in his application, he is not entitled to recover his filing fee from the landlord.

Conclusion

The tenant's application is dismissed, without leave to reapply.

Pursuant to section 55 of the *Act*, I grant an Order of Possession to the landlord effective **two days after service on the tenant**. Should the tenant fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

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: June 27, 2018

Residential Tenancy Branch