



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: CNC, OLC, RP, FFT

Introduction:

The Application for Dispute Resolution filed by the Tenant seeks the following:

- a. An order to cancel the one month Notice to End Tenancy that was received by the Tenant as set in the Application for Dispute Resolution on April 25, 2018
- b. An order that the landlord comply with the Residential Tenancy Act, Regulations and/or tenancy agreement.
- c. A Repair Order
- d. An order to recover the cost of the filing fee.

A hearing was conducted by conference call in the presence of both parties. On the basis of the solemnly affirmed evidence presented at that hearing, a decision has been reached. All of the evidence was carefully considered.

Both parties were given a full opportunity to present evidence and make submissions. Neither party requested an adjournment or a Summons to Testify. Prior to concluding the hearing both parties acknowledged they had presented all of the relevant evidence that they wished to present.

On the basis of the oral evidence presented at the hearing I find that the one month Notice to End Tenancy was personally served on the Tenant on April 25, 2018. Further I find that the Application for Dispute Resolution/Notice of Hearing was sufficiently served on the landlord as the landlord acknowledged service of the Application for Dispute Resolution. With respect to each of the applicant's claims I find as follows:

Issues to be Decided:

The issues to be decided are as follows:

- a. Whether the tenant is entitled to an order cancelling the Notice to End Tenancy dated?
- b. Whether the tenant is entitled to an order that the landlord comply with the Residential Tenancy Act, Regulations and/or tenancy agreement?
- c. Whether the Tenant is entitled to a repair order?
- d. Whether the tenant is entitled to recover the cost of the filing fee?

Background and Evidence:

The written tenancy agreement provided that the tenancy would start on July 1, 2016, end on June 30, 2017 and become month to month after that. The rent was originally set for \$995 per month. The tenant paid a security deposit of \$500 at the start of the tenancy. The present rent is \$1040 per month. The tenancy agreement included a handwritten clause that provides as follows: "Absolutely no smoking or pets."

The landlord SN seeks to end the tenancy based on the following evidence:

- Prior to entering into the tenancy agreement the landlord and the tenant had a conversation in which the landlord advised the Tenant this was a No Smoking rental unit. The Tenant denied that she smoked and/or she took illegal drugs.
- The no smoking requirement was an important term for the landlord as he suffers from a health condition and the presence of the smoke jeopardizes this condition. He also has a young child and he is concerned about the effects of second hand smoke on her. His wife is also sensitive to second hand smoke.
- The tenancy agreement included a provision "Absolutely no smoking or pets."
- The tenant smokes marijuana in the rental unit on a daily basis. There are multiple times during the course of the day where he and his family smell marijuana smoke coming from the basement suite.
- The basement suite where the Tenant resides is connected to the landlord's living area through a door and the smoke seeps under the door upstairs.
- The landlord produced a great many text messages asking the tenant to refrain from the smoking of marijuana.
- The tenant was asked to smoke in an area at the end of the block.
- The tenant has caused significant damage to the rental unit including:
 - She installed a stripper's pole that is raising the ceiling.
 - The tenant broke the kitchen faucet and toilet bowl.
 - The tenant damaged the bathtub drain.
 - The tenant caused damage to the kitchen faucet
 - The tenant damaged the kitchen cabinet and bi fold doors.
- The landlord testified he has paid \$3000 in repairs for the two years the tenant has lived in the rental unit.
- She failed to use the fan for the stove and the fire alarm was activated. At one time this occurred during the early hours of the morning. The tenant de-activated the fire alarm and the basement suite was without a fire alarm for a period of time.

MN is married to SN and confirmed the evidence of her husband. She testified she is sensitive to smoke and testified the tenant's negligence has caused significant damage.

The landlords refer to letters from neighbours confirming the marijuana smoke.

The tenant gave the following evidence:

- Both landlords are liars.
- She has never dealt with the female landlord.
- She has been a tenant in other places for other 6 years and never been evicted before.
- She denied that she smoked marijuana in the rental unit. She testified that when she receives a text from the landlord she offers for the landlord to come down and inspect but the landlord has not done so.
- She submits the evidence of the neighbors and their tenants should not be given much weight as one is the parents of one of the landlords. The tenants intimidated into writing the letters.
- The tenant referred to a revised letter from KK. That letter revised a statement she had given to the landlord and included the following:
 - She felt pressured to write the previous letter.
 - The tenant is a great person and she has never actually witnessed the Tenant smoking inside. She has witnessed the Tenant smoking outside in a designated area.
 - She has smelt the substance in her room but she does not have any valid proof as to whether or if it even came from her (the tenant)
 - I have been in the tenant's unit once and did not notice a smell of marijuana or anything illegal. .
- She denied that the stripper pool was causing damage. The landlord did not require that it be removed.
- The faucets etc. are of poor quality.
- She denied she broke the toilet bowl.
- The landlord has illegally increased the rent on two occasions. He is trying to evict me in order to raise the rent.

Grounds for Termination:

The Notice to End Tenancy identifies the following grounds:

- 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
 - put the landlord's property at significant risk
- Tenant has engaged in illegal activity that has, or is likely to:
 - damage the landlord's property
 - adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant or the landlord
 - jeopardize a lawful right or interest of another occupant or the landlord
- Tenant has caused extraordinary damage to the unit/site or property/park
- Tenant has not done required repairs of damage to the unit/site
- Breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so
- Tenant knowingly gave false information to prospective tenant or purchaser of the rental unit/site or property/park

Analysis:

After carefully considering all of the evidence I determined the landlord has established sufficient cause to end the tenancy for the following reasons:

- I prefer the evidence of the landlord to that of the tenant. I find that the tenant smokes marijuana in the rental unit on a regular basis.
- I determined this is a breach of a material term of the tenancy agreement. The requirement of "No Smoking..." was handwritten as an additional term of the tenancy agreement.
- I determined the continued smoking of marijuana in the rental unit has significantly interfered with and unreasonably disturbed the landlord and has seriously jeopardized the health and safety of the landlord. I accept the male landlord's testimony that the second hand smoke from marijuana puts his health at risk. I also accept the testimony of the female landlord's evidence that she is sensitive to the smoke and it causes health problems for her..
- I determined the de-activation of the smoke detector by the Tenant has put the landlord's property at significant risk.
- I am satisfied the tenant has caused extraordinary damage to the rental unit including the kitchen faucet and bathroom drain.
- The failure to advise the landlord of the damage to the kitchen faucet and bath drain has put the landlord's property at significant risk.

Determination and Orders:

As a result I ordered that the application of the tenant to cancel the one month Notice to End Tenancy be dismissed. I order that the tenancy shall end on June 30, 2018 which is the date set out in the Notice to End Tenancy. I further order that other claims in the Tenant's application be dismissed without leave to re-apply as the tenancy is coming to an end.

Order for Possession:

The Residential Tenancy Act provides that where an arbitrator has dismissed a tenant's application to cancel a Notice to End Tenancy, the arbitrator must grant an Order for Possession. As a result I granted the landlord an Order for Possession effective June 30, 2018.

The tenant must be served with this Order as soon as possible. Should the tenant fail to comply with this Order, the landlord may register the Order with the Supreme Court of British Columbia for enforcement.

This decision is final and binding on the parties.

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 25, 2018

Residential Tenancy Branch