



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, FFT

Introduction

This hearing dealt with an Application for Dispute Resolution by the Tenant filed under the *Residential Tenancy Act* (the “Act”), to cancel One Month Notice to End Tenancy for Cause, (the “Notice”) issued on May 19, 2018.

Both the Landlord and Tenant attended the hearing and were each affirmed to be truthful in their testimony. They were both provided with the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing. The parties testified that they exchanged the documentary evidence that I have before me. The Landlord and the Tenant were each affirmed to be truthful in their testimony.

In a case where a tenant has applied to cancel a Notice, Rule 7.18 of the Residential Tenancy Branch Rules of Procedure require the landlord to provide their evidence submission first, as the landlord has the burden of proving cause sufficient to terminate the tenancy for the reasons given on the Notice.

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

Issues to be Decided

- Should the Notice issued on May 19, 2018, be cancelled?
- If not, is the Landlord entitled to an order of possession?
- Is the Tenant entitled to the return of the filing fee?

Background and Evidence

The parties testified that the tenancy began on May 1, 2016, as a one-year fixed term tenancy, which converted into a month to month tenancy. Rent in the amount of \$936.00 is to be paid by the first day of each month, and the Tenant paid the Landlord a \$450.00 security deposit at the outset of the tenancy. The Landlord provided a copy of the tenancy agreement.

The Landlord testified that she issued the Notice on May 19, 2018. The reasons checked off by the Landlord within the Notice are as follows:

- *Tenant has engaged in illegal activity that has, or is likely to:*
 - *Adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant or the Landlord*
- *Breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written Notice to do so*

The Notice states the Tenant must move out of the rental unit by June 30, 2018. The Notice informed the Tenant of the right to dispute the Notice within 10 days after receiving it. The Tenant confirmed receiving the Notice on May 19, 2018, and she applied to dispute the Notice on May 25, 2018.

The Landlord testified that the tenancy agreement stated that there was no smoking in the rental unit. The Landlord testified that on December 11, 2017, she received a letter from the strata council advising her that they had received several complaints of the smell of marijuana smoke coming from the Tenant's rental unit. The Landlord testified that she personally went to the rental unit to speak to the Tenant regarding the complaint. The Landlord stated she reminded the Tenant that there was no smoking in the rental unit and issued the Tenant a written warning regarding this breach, on Dec 12, 2017.

The Landlord testified that she received a second notification from the strata council that there had been additional complaints regarding her Tenant continuing to smoke in the rental unit, on May 19, 2018. The Landlord testified that she went over to the rental unit that same day to issue the Tenant the notice to end tenancy. The Landlord testified that when the Tenant opened the door, she was hit with a waft of smoke and a strong smell of marijuana. The Landlord testified that she had not smelled or seen smoke in the building before the Tenant opened the door.

The Tenant testified that she understands there is no smoking allowed in the rental unit, and stated that she has not smoked in the rental unit. The Tenant testified that there is someone in the building that does not like her and claimed that this person had submitted false claims of her smoking to the strata council. The Tenant provided five

letters of reference into documentary evidence, from some of her neighbours in the building.

Analysis

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

I have reviewed the tenancy agreement, and I find that it is a material term of the tenancy that the rental unit is a non-smoking unit.

I accept the sworn testimony of the Landlord that she had received complaints from the strata council about the smell of marijuana smoke coming from the Tenant's rental unit.

I also accept the sworn testimony from both parties that the Landlord served a written warning to the Tenant on December 12, 2017, notifying the Tenant of complaints regarding the smell of marijuana smoke coming from her rental unit. The warning letter reminded the Tenant that her rental unit was a non-smoking unit, required the Tenant to stop all smoking in the rental unit and advised the Tenant that any further breach of this material term could result in her eviction.

I acknowledge the letters provided into documentary evidence by the Tenant, and I recognise that there are persons living in the building that are not bothered by the smell of smoke or have not personally smelt smoke. However, I find their comments do not nullify the responsibility of the Tenant to honour the material term in her tenancy agreement, of not smoking or allowing smoking in the rental unit.

I accept that the sworn testimony of the Landlord, that she received a new complaint from the strata council regarding the continued smell of marijuana smoke coming from the Tenant's rental unit, on May 19, 2018.

I find the unrefuted testimony of the Landlord, that she had personally witnessed smoke and the experienced the smell of marijuana coming from the Tenant's rental unit, to be reliable.

I find that the Tenant has breached a material term of her tenancy by smoking or permitting others to smoke inside the rental unit.

Therefore, I dismiss the Tenant's application to cancel the Notice issued on May 19, 2018.

I find the Notice issued on May 19, 2018, is valid and enforceable.

Under section 55 of the Act, if the tenant's application is dismissed and the Notice complies with Section 52, I am required to grant the landlord an order of possession to the rental unit. Therefore, I find that the Landlord is entitled to an order of possession, effective not later than 2 days after service of this Order.

As the Tenant has not been successful in her application to cancel the notice, I find the Tenant is not entitled to recover the filing fee for this hearing.

Conclusion

I dismiss the Tenant's application to cancel the Notice issued on May 19, 2018.

I grant the Landlord an **order of possession** effective not later than **2 days** after service of this Order. The Landlord is provided with this Order in the above terms, and the Tenant must be served with this Order as soon as possible. Should the Tenant fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and 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: July 16, 2018

Residential Tenancy Branch