



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding SHANNON GARDENS APARTMENTS
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes

CNC

Introduction

This teleconference hearing was scheduled in response to an application by the Tenant under the *Residential Tenancy Act* (the “Act”) to cancel a One Month Notice to End Tenancy for Cause (the “One Month Notice”).

Three agents for the Landlord (the “Landlord”) were present for the teleconference hearing, as was the Tenant. The Landlord stated that they received information about the hearing from the Tenant in person in June, but did not receive copies of the Tenant’s evidence. The Tenant confirmed that he provided the Landlord with the Notice of Hearing, but no evidence. Despite not receiving the hearing information within the outlined timeframe, the Landlord accepted the Notice of Hearing as served and were willing to continue with the hearing.

As the Tenant submitted the One Month Notice into evidence and this dispute is regarding the One Month Notice issued by the Landlord, this will be accepted as evidence. A video submitted by the Tenant will not be considered as part of this decision as it was not served to the Landlord in accordance with the *Residential Tenancy Branch Rules of Procedure*. The parties were advised of this during the hearing. The Landlord did not submit any evidence prior to the hearing.

All parties were affirmed to be truthful in their testimony and were provided with the opportunity to present evidence, make submissions and question the other party.

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 are described in this decision.

Preliminary and Procedural Matters

The address of the rental unit as stated on the Application for Dispute Resolution included the name of the rental building. As this was clarified during the hearing, the building name was

removed from the address of the rental unit on the Application. This amendment was made pursuant to Section 64(3)(c).

Issue to be Decided

Should the One Month Notice to End Tenancy for Cause be cancelled?

If the One Month Notice is upheld, is the Landlord entitled to an Order of Possession?

Background and Evidence

The Landlord testified that the tenancy began on September 8, 2017, while the Tenant testified that the tenancy began on October 1, 2017. The parties agreed that rent is \$850.00 per month, and a security deposit of \$425.00 was paid at the outset of the tenancy.

On May 16, 2018, the Landlord served the Tenant with a One Month Notice by posting it on the Tenant's door. The One Month Notice states the reason for ending the tenancy as the following:

- Tenant or a person permitted on the property by the tenant has
 - Significantly interfered with or unreasonable disturbed another occupant or the landlord
- Tenant or a person permitted on the property by the 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
- Breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so

No further details of the reasons for ending the tenancy were provided on the One Month Notice.

The Landlord provided testimony that they began receiving complaints about the smell of marijuana smoke coming from the Tenant's rental unit shortly after he moved in. Since then, they stated that they receive multiple complaints every month regarding the smell of marijuana smoke coming from the unit. The Landlord confirmed that it is a non-smoking building.

The Landlord also testified that the Tenant has friends over who enter the unit by jumping over the balcony, instead of entering the building through the front door. They also noted often hearing loud music from the rental unit.

Three breach letters have been issued to the Tenant, on October 17, 2017, November 16, 2017 and December 5, 2017. The Landlord testified that they have also had multiple in-person

conversations with the Tenant about the marijuana smoke, loud music and friends entering the unit by jumping over the balcony.

The Landlord stated that nothing has changed since the issuance of the breach letters or conversations they have had with the Tenant, which led to the issuance of the One Month Notice on May 16, 2018. They reported that since serving the Tenant with the One Month Notice, they have continued to receive regular complaint letters from other residents of the building regarding the smell of marijuana coming from his unit.

The Landlord testified that the building manager has tried to talk to the Tenant about the concerns many times, but that the Tenant is not cooperating. Due to this, they are willing to provide more time for the Tenant to find a new place, but are not willing to have the tenancy continue, as the issues have been ongoing and constant since the start of the tenancy.

The Tenant testified that he received one breach letter shortly after he first moved in regarding smoking marijuana in the rental unit. Since then, he stated that he has not smoked marijuana in the unit and neither have any of his friends. The Tenant agreed that the hallways smell like marijuana often, but denied that it is coming from his unit.

The Tenant confirmed one instance when the building manager spoke to him about concerns of smoking marijuana in the unit. The Tenant stated that he has told the Landlord that they can enter his unit anytime to confirm that the marijuana smell is not coming from his unit. He also stated that the hallways smell like cigarette smoke, which is also not coming from his unit.

The Tenant agreed that he received one warning letter regarding loud music playing in his unit. He testified that he does not play music past 9:00 pm, and the incident in question involved loud music playing while he was in the shower around 4:00 pm. He stated that since receiving the warning letter, he has been very careful to not play music too loudly, even during the day.

The Tenant testified that sometimes his friends do enter his rental unit by jumping over the balcony, and that other times they use the front door of the building. He stated that his friends do not usually stay over for too long, just long enough to play a few video games and then they leave. He said they do not smoke marijuana in his unit and do not play loud music.

The Tenant would like to stay living in this rental unit and is willing to have the Landlord come into his unit anytime to confirm that the smell of marijuana is not coming from his rental unit.

Analysis

Based on the testimony of both parties, and on a balance of probabilities, I find as follows:

I refer to Rule 6.6 of the *Residential Tenancy Branch Rules of Procedure* which states that when a tenant applies to cancel a notice to end tenancy, the onus is on the Landlord to prove that the reasons for the notice are valid.

While the Landlord provided testimony regarding the three breach letters that were provided to the Tenant and the multiple complaint letters they have received from other residents of the building, none of these documents were submitted into evidence.

The Tenant was in disagreement as to how many breach letters he has received, as well as the number of times he has been spoken to about the concerns from the Landlord. Based on the conflicting testimony and lack of evidence, I am not able to confirm how many warnings the Tenant received and whether complaints continued after the receipt of these warnings.

The parties were also in disagreement as to whether the Tenant is smoking marijuana in his unit, and therefore is responsible for the smell of marijuana smoke in the hallways of the building. Both parties agreed that marijuana smoke is commonly smelled in the hallway, but the Tenant claimed neither he nor his friends smoke marijuana anywhere on the rental property.

There was conflicting testimony regarding the source of the marijuana smell in the rental building. As the Tenant claimed he was not responsible for the smell, and in the absence of any evidence to prove otherwise, I am not able to confirm that the Tenant is smoking marijuana in the rental unit.

The Landlord also noted complaints about loud music and the parties were again in disagreement as to whether this was an ongoing concern or not. The Tenant testified that after receiving a complaint about the volume of the music from his unit, he has stopped playing music loudly in his rental unit. The Landlord testified that this is an ongoing issue for which they receive regular complaints.

Again, due to the conflicting testimony and in the absence of any evidence to prove otherwise, I am not able to determine that the Tenant is playing loud music in his unit.

The Landlord also had concerns about the Tenant's friends entering the unit by jumping over the balcony, instead of using the front door. While the Tenant was in agreement that his friends sometimes enter the rental unit in this manner, I do not find evidence of this being a breach of the tenancy agreement, or causing significant harm that would lead to the issuance of the One Month Notice.

I do, however, note that this behaviour may indeed lead to damage of the Landlord's property and the Tenant and any guests of the Tenant should use the door of the building to enter and exit. However, as a stand-alone concern, and without evidence of the potential damage or risk to the building, I do not find this to be significant enough to end the tenancy.

Section 47(4) of the *Act* states that a tenant has 10 days after receipt of the One Month Notice to dispute the notice. As the Tenant confirmed receipt of the One Month Notice on May 16, 2018 and he applied to dispute the notice on May 20, 2018, I find that he applied within the time allowable under the *Act*.

I find that the Landlord, who bears the burden of proof, did not provide sufficient evidence to demonstrate that the reasons for the One Month Notice are valid. As such, I find that the One Month Notice dated May 16, 2018 is cancelled and is of no force or effect. This tenancy continues until ended in accordance with the *Act*.

Conclusion

The One Month Notice dated May 16, 2018 is cancelled and of no force or effect. This tenancy continues until ended in accordance with the *Act*.

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 19, 2018

Residential Tenancy Branch