



Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC FF OLC

Introduction

This hearing dealt with an application by the tenant pursuant to the *Residential Tenancy Act* (“the Act”) for an order as follows:

- to cancel a 1 Month Notice to End Tenancy given for Cause (“1 Month Notice”) pursuant to section 47 *Act*;
- an Order directing the landlord to comply with the *Act* pursuant to section 62; and
- a return of the filing fee pursuant to section 72 of the *Act*.

Both tenant and the landlord attended the hearing. The landlord was represented at the hearing by agent, K.M. (the “landlord”). All parties present were given a full opportunity to be heard, to present their sworn testimony and to make submissions under oath.

The tenant confirmed receipt of the landlord’s 1 Month Notice to End Tenancy, along with the landlord’s evidentiary package. The tenant argued that he did not have adequate time to review the landlord’s evidence supplied to him by Canada Post Registered Mail after it was sent on August 2, 2018. *Residential Tenancy Rule of Procedure 3.15* states as follows, “the respondent must ensure evidence they intend to rely on at the hearing is served on the applicant and submitted to the Residential Tenancy Branch as soon as possible...the respondent’s evidence must be received by the applicant and the Residential Tenancy Branch not less than seven days before the hearing.” I find the tenant pursuant to section 90 of the *Act* was deemed served with the landlord’s documents on August 7, 2018, five days after being mailed by the landlord on August 2, 2018. I find the tenant received these documents within the appropriate timelines and will therefore consider the landlord’s evidentiary package at the hearing.

Following opening remarks, the landlord questioned whether the tenant’s evidentiary package should be considered at the hearing. The landlord said her office received these documents on June 29, 2018, far beyond the three days permitted to serve documents following a party filing an application for dispute. *Residential Tenancy Policy Guideline 3.1* states as follows:

The applicant must, within three days of the Notice of Dispute Resolution Proceeding Package being made available by the Residential Tenancy Branch, serve each respondent with copies of all of the following

- a) the Notice of Dispute Resolution Proceeding provided to the applicant by the Residential Tenancy Branch, which includes the Application for Dispute Resolution;
- b) the Respondent Instructions for Dispute Resolution;
- c) the dispute resolution process fact sheet (RTB-114) or direct request process fact sheet (RTB-130) provided by the Residential Tenancy Branch; and
- d) any other evidence submitted to the Residential Tenancy Branch directly or through a Service BC Office with the Application for Dispute Resolution, in accordance with Rule 2.5 [Documents that must be submitted with an Application for Dispute Resolution].

Despite this delay in serving documents, after applying for dispute on June 18, 2018, I find that the landlord received the tenant's evidence with sufficient time to review all associated documents. I find a delay of eight days in receiving the tenant's evidence did not prejudice the landlord from responding to the tenant's application and pursuant to section 71(2)(b) of the *Act*, I find the tenant's evidentiary package was sufficiently served to the landlord beyond the three days deadline as described in *Rule of Procedure 3.1*.

Issue(s) to be Decided

Can the tenant cancel the landlord's 1 Month Notice? If not, is the landlord entitled to an Order of Possession?

Can the tenant recover the filing fee associated with the application?

Should the landlord be directed to comply with the *Act*?

Background and Evidence

Testimony provided to the hearing by the landlord confirmed this tenancy began on September 1, 2017. Rent was \$2,800.00 per month and a security deposit of \$1,400.00 paid at the outset of the tenancy continues to be held by the landlord.

On June 8, 2018 the landlord served the tenant with a 1 Month Notice to End Tenancy ("1 Month Notice"). The reason cited on the 1 Month Notice was listed as follows:

- *Tenant or a person permitted on the property by the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord, and seriously jeopardized the health or safety or lawful right of another occupant or the landlord.*

The landlord explained the rental unit in question was a duplex which housed the tenant, along with two separate occupants in a neighbouring unit. The landlord said the other occupants of the duplex had repeatedly complained to her about the smell of marijuana being smoked on the property. Specifically, these occupants cited June 5, 6, 8, 9, 13 & 27 as being the dates on which incidents had occurred. Following this final incident of June 27, the landlord wrote a warning letter to the tenant dated June 28, 2018. This letter stated, "it has come to my attention that you and/or your guests may be smoking marijuana on the property on June 27, 2018. This is in contravention of the following clause from the 'Additional Terms' that is stated in your signed [Tenancy Agreement] called 'Conduct'." This letter then goes on to describe a tenant's responsibility as it relates to quiet enjoyment of the rental property. The letter concludes by stating, "You can consider this a warning and should there be any further complaints it will leave us no alternative but to issue you a termination notice to end your tenancy."

The landlord explained that in June 2018, they had participated in an arbitration before the *Residential Tenancy Branch* where the other occupants of the duplex were awarded a monetary award for loss of quiet enjoyment due to the tenant's smoking of marijuana. The landlord continued by describing the warning from the arbitrator who heard the case, of a possible administrative fine under the *Act*, if action was not taken to address the concerns of the tenants who occupied the neighbouring half of the duplex.

The tenant disputed that any actions by him or his guests resulted in a disturbance to the other occupants of the rental complex. The tenant said he did not consume marijuana on the property, and stated he certainly did not smoke marijuana on the property. The tenant confirmed having received a warning letter from the landlord on June 28, 2018. He said following receipt of this letter, he took extreme precautions to ensure that any of his edible marijuana products were adequately stored. The landlord acknowledged that no further complaints had been received from the other tenants following the issuance of this warning letter dated June 28, 2018.

The tenant attributed the complaints levelled against him by the other residents as resulting from an acrimonious relationship that had developed between the parties over

the course of the tenancy. The tenant described several conflicts he had with the other occupants of the duplex and argued their complaints were baseless. As part of the tenant's evidentiary package an email was submitted from the former property manager who described the issues that arose between the parties. This email said, "The tenants in 18XX made it clear they didn't like their neighbors (sic) lifestyle...their mandate was to get him evicted and they proceed to complain about him almost on a daily basi[s]." This email continues by stating, "I personally never smelled some on my numerus visits to the property."

Analysis

The landlord issued a 1 Month Notice to the tenant alleging: *The Tenant or a person permitted on the property by the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord, and seriously jeopardized the health or safety or lawful right of another occupant or the landlord.*

The landlord argued the tenant and his guests had consistently smoked marijuana on the property, leading the occupants of the neighbouring rental unit to suffer a loss of quiet enjoyment. During the hearing, the landlord highlighted a June 2018 decision issued by an arbitrator with the *Residential Tenancy Branch*. In this hearing between the landlord and the neighbouring occupants it was established by the arbitrator that the tenant had smoked in the rental home and disturbed these other occupants. In addition, the landlord included an email from the other occupants noting the dates on which these alleged smoking incidents are to have occurred.

After having reviewed the evidence submitted by both parties and having considered the oral testimony of the parties, I find the landlord has failed to establish the tenant unreasonably disturbed the quiet enjoyment of the neighbouring occupants. A warning letter dated June 28, 2018 from the landlord to the tenant highlights numerous issues which were identified by the neighbouring occupants and this warning letter provided the tenant with an opportunity to change his behaviour. Testimony from the landlord confirmed that no further complaints had been received following the issuance of this warning letter. While the tenant's behaviour may have previously affected the other occupants ability to quietly enjoy their rental unit, I find insufficient evidence was presented which showed any continued problem emanate from the tenant's rental unit. I find the tenant has taken the complaint letter from the landlord seriously and made efforts to ensure he can live harmoniously with the neighbouring occupants of the duplex. Furthermore, I find an email submitted by the tenant from the previous building manager describing the acrimonious relationship between the parties to be a strong indication that the complaints issued by the neighbouring occupants may be motivated

by a personal hostility for the tenant. I therefore dismiss the landlord's 1 Month Notice and find that this tenancy shall continue until it is ended in accordance with the *Act*.

The tenant is cautioned to ensure that his future actions do not disturb the other occupants of the rental unit. This decision does not prevent the landlord from issuing a new Notice to End Tenancy, should the tenant once again disturb the landlord or another occupant.

As the tenant was successful in his application he may pursuant to section 72 recover the \$100.00 filing fee from the landlord. In lieu of a monetary award the tenant may withhold \$100.00 from a future rent payment on one occasion in full satisfaction for a return of the filing fee.

I find no reason to direct the landlord to comply with any portion of the *Act*. It is evident the landlord is simply doing their job and attempting to accommodate two parties who do not get along.

Conclusion

The landlord's 1 Month Notice to End the Tenancy is cancelled and of no continuing force or effect. This tenancy shall continue until it is ended in accordance with the *Act*.

The tenant may withhold \$100.00 from a future rent payment on one occasion in full satisfaction for a return of the filing fee.

The tenant's application for Orders directing the landlord to comply with the *Act* is dismissed.

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: August 14, 2018

Residential Tenancy Branch