



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, OLC, FFT

Introduction

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

- cancellation of the landlord's 1 Month Notice to End Tenancy for Cause (the "1 Month Notice") pursuant to section 47;
- an order requiring the landlord to comply with the *Act*, *Residential Tenancy Regulation* ("Regulation") or tenancy agreement pursuant to section 62; and
- authorization to recover the filing fee for this application from the landlord pursuant to section 72.

The tenant and the landlord's two agents (collectively the "landlord") attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. The landlord confirmed they were agents of the landlord's company named in this application, and had authority to speak on its behalf.

At the outset of the hearing, the landlord confirmed receipt of the tenant's application and evidence package. As the landlord did not raise any issues regarding service of the application or the evidence, I find that the landlord was duly served with these documents in accordance with sections 88 and 89 of the *Act*.

The landlord testified that on October 10, 2018 she personally served the tenant with a written evidence package, which included a written tenancy agreement, a copy of the tenancy application, breach letter and letter outlining the landlord's position. The tenant testified that he refused to accept the evidence package on the premise that it was late. When asked what he did with the evidence package, the tenant testified that he took a photograph of the contents, sent copies to his lawyer and then destroyed it.

As evidenced by the tenant's own testimony, he received the evidence package and reviewed it. Further the tenant confirmed the existence of the written tenancy agreement, tenancy application and breach letter. For these reasons, I find the tenant was served the evidence package in accordance with the *Act* and I therefore considered it in my decision.

Issue(s) to be Decided

Should the landlord's 1 Month Notice be cancelled? If not, is the landlord entitled to an order of possession?

Is the tenant entitled to an order requiring the landlord to comply with the *Act*, *Regulation* or tenancy agreement?

Is the tenant authorized to recover the filing fee for this application from the landlord?

Background and Evidence

As per the submitted tenancy agreement and testimony of the parties, the tenancy began on February 1, 2017 on a fixed term until January 31, 2018 at which time the tenancy continued on a month-to-month basis. Rent in the amount of \$1,508.00 is payable on the first of each month. The tenant remitted a security deposit in the amount of \$725.00 at the start of the tenancy, which the landlord still retains in trust. The tenant continues to reside in the rental unit.

The tenant acknowledged personal receipt of the landlord's 1 Month Notice dated August 28, 2018. The grounds to end the tenancy cited in that 1 Month Notice were;

- breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so

The landlord testified that the 1 Month Notice was issued in response to the tenant's breach of a non-smoking clause in the tenancy agreement. The landlord testified that the building is designated non-smoking, as evidenced by the "no-smoking" sign on the front entrance doors. The landlord testified that during a routine inspection in May of 2018, it became apparent that the tenant was smoking in the building. In particular the landlord found a filled ashtray on the tenant's balcony. On June 4, 2018 the landlord informed the tenant in writing of the breach, specifically of the smoking in a non-

smoking building. In the letter the landlord instructs the tenant to cease smoking in the building immediately and advises that failure to do so would result in termination of the tenancy. The landlord testified that despite the warning letter, on August 20, 2018, while working on the envelope of the building, he directly observed the tenant smoking on the balcony. The landlord testified that, at this time he communicated to the tenant that smoking was not permitted. As a result, the landlord issued the 1 Month Notice.

While the tenant acknowledged the application and agreement stipulate no smoking it is his position that he is not in breach because he does not smoke inside the unit; he smokes outside the unit, on the balcony. The tenant testified that the previous resident caretaker was aware of his smoking and never prohibited it. The tenant confirmed receipt of the June 4, 2018 letter, but testified that he understood this letter was in relation to smoking inside the building only.

Analysis

Under section 47 of the *Act*, a landlord may end the tenancy for breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so. In order to end a tenancy for breach of a material term the landlord must prove the breach and prove the tenant was provided with written notice of the breach that includes a timeline for the tenant to correct the breach.

Upon review of the documentary evidence, I am satisfied that the landlord has established grounds to end this tenancy on the basis of a breach of the tenancy agreement. I am satisfied that the tenant was provided written notice of the breach and adequate time to correct it, yet failed to do so. Although the breach letter indicates smoking is prohibited inside the building I find the tenant knew or ought to have known that this prohibition included the balcony. I find that the no-smoking sign, tenancy application and the tenancy agreement in conjunction with the breach letter establish that the tenant is not permitted to smoke in the building, which includes the balcony. I find that the tenant has provided insufficient evidence to substantiate his claim that the landlord knew of his smoking and failed to prohibit it. For these reasons, I dismiss the tenant's application to cancel the 1 Month Notice.

Section 55 of the *Act* establishes that if a tenant makes an application for dispute resolution to dispute a landlord's notice to end tenancy, an order of possession must be granted to the landlord if, the notice to end tenancy complies in form and content and the tenant's application is dismissed or the landlord's notice is upheld. Section 52 of the *Act* provides that a notice to end tenancy from a landlord must be in writing and must be

signed and dated by the landlord, give the address of the rental unit, state the effective date of the notice, state the grounds for ending the tenancy, and be in the approved form.

Based on the landlord's testimony and the notice before me, I find the 1 Month Notice complies in form and content. As the tenant's application has been dismissed, I find that the landlord is entitled to an order of possession, pursuant to section 55 of the *Act*.

As the tenant was not successful in this application, I find that the tenant is not entitled to recover the \$100.00 filing fee paid for the application.

Conclusion

The tenant's application to cancel the Notice is dismissed.

An order of possession is granted to the landlord effective **two (2) days after service on the tenant**.

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: October 18, 2018

Residential Tenancy Branch