



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, OPR, FF

Introduction

The landlords and the tenant convened this hearing in response to applications).

The landlords' application is seeking orders as follows:

1. For an order of possession; and
2. To recover the cost of filing the application.

The tenant's application is seeking orders as follows:

1. To cancel a One Month Notice to End Tenancy for Cause (the "Notice") issued on August 30, 2018; and
2. To recover the cost of filing the application.

Both parties appeared, gave affirmed testimony, and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions at the hearing.

Both parties appeared, gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions to me.

In a case where a tenant has applied to cancel a notice for cause 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 evidence and testimony before me that met the requirements of the rules of procedure. I refer only to the relevant facts and issues in this decision.

Issue to be Decided

Should the Notice be cancelled?

Background and Evidence

The tenancy began on May 1, 2015. Rent in the amount of \$1,070.00 was payable on the first of each month. A security deposit of \$495.00 was paid by the tenant

The parties agreed that the Notice was served on the tenant indicating that the tenant is required to vacate the rental unit on October 1, 2018.

The reason stated in the notice to end tenancy was that the tenant has:

- The tenant has allowed an unreasonable number of occupants in the unit;
- 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.
- The tenant or a person permitted on the property by the 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;
 - Jeopardize a lawful right or interest of another occupant or the landlord;
- Tenant or a person permitted on the property has caused extraordinary damage to the unit.

The landlords testified that they want to end the tenancy for an incident that happened on August 18, 2018. The landlords stated that they had received a complaint that the tenants had an out of control party, that started at 5:30 pm and when to 1:00 am.

The landlords testified that during the party the tenant started a fire on their barbeque that put the wood famed building at significant risk and cause smoke damage in the upper unit.

The landlords testified that the tenant left glasses and plates of food out on the patio and there was stuff all over the common area of the lawn. The landlords stated this attracted rodents.

The landlords testified that the tenant or their guests were smoking cigarettes, marihuana and they were said to be smoking something in a glass pipe.

The tenant testified that there was a birthday party for their son, which consisted in total six (6) people. The tenant stated that the party was not out of control. The tenant stated that they left the residence at approximately 10:30pm and there was only three people remaining. The tenant stated that they acknowledged that they may have been some noise from their son and the two remaining guest from talking outside. The tenant stated that they have never received any complaints of noise during their tenancy, prior to this incident and it should not be sufficient to end the tenancy.

The tenant testified that they were using a small tabletop gas barbeque and the food they were cooking drip fat, causing small flames from the grease igniting. The tenant denied there was any fire that endangered the premises.

The tenant testified that they did not leave dished of food outside. The tenant stated that they had used paper plates, which were cleaned up. The tenant denies any garbage in the common area.

The tenant testified that they do smoke on the patio that is part of the rental unit, as there are no restrictions in their tenancy agreement regarding smoking. The tenant denies that they were throwing cigarettes in the bush. The tenant stated that there was nothing being smoked in a glass pipe. The tenant stated that the photograph submitted by the landlord is of an ashtray on their patio.

The tenant testified that the police, nor fire departments were not called. Nor did they receive any strata fines for this incident.

Analysis

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

After considering all of the written and oral submissions submitted at this hearing, I find that the landlord has provided insufficient evidence to show that the tenant has:

- The tenant has allowed an unreasonable number of occupants in the unit;
- 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.
- The tenant or a person permitted on the property by the 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;
 - Jeopardize a lawful right or interest of another occupant or the landlord;
- Tenant or a person permitted on the property has caused extraordinary damage to the unit.

In this case, the tenant acknowledged that they had a small party to celebrate their son's birthday; I find this reasonable. I further find six people attending the celebration are a reasonable amount of occupants.

I do not accept that the party was out of control from 5:30pm to 1:00am, as alleged by the upper occupant, because if it was out of control, it would have been reasonable to have the police attend and have the party shutdown.

While I accept there may have been some noise after the strata by-law 11:00 pm "quiet time"; however, this was one occasion and it was celebrating the birthday of the tenant's son. The tenant, nor did the landlord, received a \$25.00 strata fine for the infraction.

Further, I find that if the tenant's barbeque put the property at significant risk due to a fire, as alleged by the occupant in the upper unit, that it would have been reasonable for the occupant to call the fire department, to attend and inspected the barbeque and surrounding areas. I find it more likely than not the upper occupant is overstating the facts.

Furthermore, there is no clause in the tenancy agreement regarding smoking. The tenant was smoking on the rental unit patio, not in the common area in which the strata controls. I find the tenant has not breached the tenancy agreement.

Furthermore, I find there is no evidence that leads me to believe the tenant was engaged in illegal activity, such a copy of a police report.

Furthermore, whether the tenant left plates of food and glasses on their patio overnight, which the tenant denied, I find that alone does not put the property as significant.

Based on the above, I grant the tenant's application to cancel the Notice. I find the Notice has no force or effect. The tenancy will continue in accordance with the Act.

Since the tenant was successful with their application, I find the tenant is entitled to recover the cost of the filing fee. Therefore, I authorize the tenant to a onetime deduction of \$100.00 from a future rent payable to the landlords.

Since the tenant was successful with their application, I dismiss the landlords' application for an order of possession. I find the landlords are not entitled to recover the filing fee from the tenant.

Conclusion

The tenant's application to cancel the Notice is granted. The tenant is entitled to a onetime rent reduction from a future rent to recover the \$100.00 filing fee from the landlords.

The landlords' application 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: October 22, 2018

Residential Tenancy Branch