



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes Tenant: CNC
 Landlord: OPC

Introduction

This hearing dealt with cross Applications for Dispute Resolution filed by the parties. The participatory hearing was held, via teleconference, on September 20, 2018.

The Landlord's Agent (referred to as the "Landlord") and the Tenant's Agent (referred to as the "Tenant") both attended the hearing. All parties provided testimony and were provided the opportunity to present evidence orally and in written and documentary form, and to make submissions to me.

The Landlord stated that he served the Tenant with his Notice of Hearing by registered mail on August 17, 2018. The Tenant acknowledged receiving this package, and the mail tracking information shows it was signed for on August 20, 2018. The Landlord also stated that he personally served the Tenant with his evidence package on September 5, 2018. The Landlord had the Tenant sign for this package and he provided a proof of service for this document. Although the person who attended the hearing for the Tenant did not have that package before him, I find the Landlord has sufficiently served the Tenant with this evidence. I will consider this evidence in this hearing.

The Tenant stated that they served the Landlord with the Notice of Hearing by registered mail on September 6, 2018. The Landlord stated that he never got a copy of the Notice of Hearing and only got some pieces of evidence. The Landlord stated that the Tenant waited a while to serve his Notice of Hearing, and he only found out the Tenant had filed to dispute the 1 Month Notice when he applied for an order of possession based on this Notice on August 17, 2018. It is unclear whether or not the Tenant included his Notice of Hearing with his first evidence package to the Landlord. The Tenant stated he included it, but the Landlord stated the Notice of Hearing was not with the evidence package. However, I am mindful that the Landlord became aware of

the Tenant's application to cancel his Notice over a month ago, and was able to collect and provide 93 pages of evidence for the hearing today. Ultimately, both parties made an application in relation to the 1 Month Notice for Cause (the Notice) issued July 20, 2018. Both applications were scheduled to be heard at this time and parties were present at the hearing and were ready to proceed to discuss the issues and present their evidence. Although the Tenant should have served his Notice of Hearing to the Landlord sooner, I find there is no prejudice to either party in hearing the issues, as both were ready to proceed.

The Tenant also submitted a second evidence package a couple of days before the hearing. As discussed during the hearing, Residential Tenancy Branch Rule of Procedure 3.14 requires that evidence to be relied upon at a hearing must be received by the Residential Tenancy Branch and the respondent not less than 14 days before the hearing. Since this evidence is late, I will not consider this portion of the Tenant's late documentary evidence in this hearing.

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

Issues(s) to be Decided

- Is the Tenant entitled to have the Notice cancelled?
 - If not, is the Landlord entitled to an Order of Possession?

Background and Evidence

The landlord issued the Notice for the following reasons:

Tenant or a person permitted on the property by the tenant has:

- *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.*

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

Under the "Details of Cause" section, the landlord specified the following: "Continual violation of building by-laws and item #5 of Lease Addendum."

In the hearing, the Landlord testified that the Tenant has lived in the rental unit for several years now, but that issues started to arise when they started to receive complaints about the smell of marijuana smoke. The Landlord stated that this is a high end luxury building and most are owner occupied, and governed by strata by-laws. The Landlord stated that on the floor that the Tenant is living, there is only one other unit that is occupied. The Landlord stated that the other two units are vacant.

The Landlord pointed to his evidence to show that the strata has received complaints, from one individual in particular, with respect to the smell of marijuana smoke. The Landlord stated that the only other person living on the floor has complained countless times (as per the emails in evidence) about the smell of second hand marijuana smoke circulating into their rental unit, and in the hallways of the building. This complainant has indicated she believes the smell is coming from the Tenants rental unit. The Landlord stated that the strata/concierge will usually follow up, and attend to do their own investigation. The Landlord stated that the Tenant has been issued around 14 strata violation fines so far with respect to this issue. The Landlord stated that the person sharing the floor with the Tenant has suffered enough due to the Tenant's smoking. The Landlord stated that this is a direct violation of the addendum in the lease agreement, and the strata bylaws.

The Landlord stated that he believes each unit has its own heat source but also stated that he believes that all the ducting between the units is interconnected. The Landlord stated he believes the ducting is interconnected between different floors and also on the same floor, which is clearly impacting the person living next to him.

The Tenant stated that he is disputing all of the strata violation fines as they are based on false and poor evidence. The Tenant stated that there is a hearing next month, where he will discuss the strata fines with the Strata. The Tenant stated that he does not smoke in the rental unit. The Tenant stated that there is no evidence that his ducting is connected to the complainants, or that the strata/Landlord would know with any degree of certainty that the smoke would be coming from him. The Tenant stated that his relationship with the person living next to him is really poor and this entire situation is based off of her complaints, which started after she bought the unit next to him (the only other occupant on the floor). The Tenant stated that the person living next to him is the only person complaining and there is no actual evidence linking him to any source of smoke.

Analysis

I turn to the Notice issued by the Landlord and I find it meets the form and content requirements under section 52 of the Act. I note the Tenant received the Notice on July 20, 2018.

After reviewing the Notice, I note that it lists multiple grounds for ending the tenancy, as above. However, it appears that much of the Landlord's testimony and evidence presented at the hearing relates to the Tenant's alleged smoking. Further, under the details of cause section of the Notice, it only identifies the smoking issue. As such, I find this is the issue I will focus on, and whether or not it has been sufficiently demonstrated that this smoking gives the Landlord sufficient cause to end the tenancy under any of the grounds selected on the Notice.

I acknowledge that the Landlord has provided many pages of evidence, including emails (complaints) about the smell of marijuana smoke and how it is impacting one of the neighbors. I also note the Tenant has denied that this smoke is coming from him. After reviewing the evidence and the testimony on this matter, I note that there is very little, if any compelling evidence to show that the Tenant is the source of the smoke. There is no question that the neighboring unit smells some smoke and that they are being negatively impacted. There is also no question that the Tenant would be in violation of his tenancy agreement and the strata bylaws if he was smoking in his unit. However, the issue with the Landlord trying to end the tenancy based on the alleged smoking, under any of the grounds he selected on the Notice, is that there is a lack of compelling evidence linking the smell of marijuana smoke to the Tenant.

Furthermore, I also note that the Landlord stated that he believes there are interconnected heating vents between different floors, and different units. With this in mind, it remains unclear to me how the source of the smoke could be pinpointed to the Tenant. Ultimately, the burden of proof is on the Landlord to demonstrate that the smoke is caused by the Tenant. I find the Landlord's evidence on this point is insufficient. I note the Landlord indicated that the strata/concierge usually checks and verifies the complaints from the neighbor before issuing fines to the Tenant. However, there is a lack of evidence surrounding how the concierge/Landlord verified or investigated with any degree of certainty that the Tenant was the source of the smoke.

I find that the Landlord has not provided sufficient evidence to support the reason to end the tenancy; therefore, the Tenant's application is successful and the Notice received by the Tenant on July 20, 2018, is cancelled. I order the tenancy to continue until ended in accordance with the *Act*.

As the Tenant was successful with his application, I grant him the recovery of the filing fee against the Landlord. The Tenant may deduct the amount of \$100.00 from 1 (one) future rent payment.

Conclusion

The Tenant's application is successful. The Notice is cancelled.

The Tenant may deduct the amount of \$100.00 from one (1) future rent payment.

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: September 21, 2018

Residential Tenancy Branch