



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC

Introduction

This hearing dealt with the tenant's application for cancellation of the landlord's One Month Notice to End Tenancy for Cause (the One Month Notice) pursuant to section 47 of the *Residential Tenancy Act* ("the *Act*").

The landlord, the landlord's assistant and the tenant attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another. The tenant had an advocate who stated that they would be assisting with the tenant's oral submissions.

While I have turned my mind to all the documentary evidence and the testimony of the parties, only the relevant portions of the respective submissions and/or arguments are reproduced here.

The landlord acknowledged receipt of the Application for Dispute Resolution (the Application) and an evidentiary package. In accordance with sections 88 and 89 of the *Act*, I find the landlord was duly served with the Application and the tenant's evidentiary package.

The tenant, through their advocate, acknowledged receipt of the landlord's evidence on September 19, 2018. In accordance with section 88 of the *Act*, I find that the tenant is duly served with the landlord's evidence.

The tenant acknowledged receipt of the One Month Notice on August 03, 2018, which was posted to the tenant's door on July 31, 2018. In accordance with sections 88 and 90 of the *Act*, I find the tenant was deemed and duly served with the One Month Notice on August 03, 2018.

Issue(s) to be Decided

Should the landlord's One Month Notice be cancelled? If not, is the landlord entitled to an Order of Possession?

Background and Evidence

The landlord and the tenant agreed that that this tenancy commenced on January 03, 2016, with a monthly rent of \$650.00, due on the first day of each month. The landlord confirmed that they continue to retain a security deposit in the amount of \$325.00.

A copy of the signed One Month Notice dated July 31, 2018, was entered into evidence by the tenant. In the One Month Notice, requiring the tenant to end this tenancy by August 31, 2018, the landlord cited the following reasons for the issuance of the One Month Notice:

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

- *significantly interfered with or unreasonably disturbed another occupant or the landlord; or*
- *seriously jeopardized the health or safety or lawful right of another occupant or the landlord; or*
- *put the landlord's property at significant risk.*

Tenant or a person permitted on the property by the tenant has engaged in illegal activity that has, or is likely to:

- *cause damage to the landlord's property; or*
- *adversely affect the quiet enjoyment, security safety or physical well-being of another occupant of the residential property; or*
- *seriously jeopardize a lawful right or interest of another occupant or the landlord.*

In the Reason for Cause section of the One Month Notice the landlord has noted:

July 30th, 2018, 1) smoking weed in the suite 2) causing a fight with the landlord

The tenant also provided in evidence a copy of an addendum signed by the tenant on January 13, 2016, showing the rules of the rental unit.

The landlord provided into evidence:

- a copy of a timeline of events that have occurred with the tenant from February 02, 2018, to the last incident that occurred on July 30, 2018, which involved an argument between the landlord's assistant and the tenant with the tenant whipping open their housecoat, shoving their chest towards the landlord 's assistant and asking him if he was wearing lipstick; and
- copies of warning letters served to the tenant including one regarding smoking cannabis in the rental unit and referring to a verbal warning previously given to the tenant when the tenant said that it would not happen again.

The landlord's assistant indicated that he co-manages the residential premises with the named landlord and submitted that they have given multiple warnings regarding various issues with the tenant, including for smoking cannabis in the rental unit. The landlord confirmed that the most recent incident that occurred, the day before the One Month Notice was posted to the tenant's door, was the key reason for the landlord seeking to end the tenancy.

The landlord's assistant testified that on July 30, 2018, they noticed that the tenant's car lights were on and proceeded to go to the rental unit to advise the tenant when they noticed the smell of cannabis in the hallway. The landlord stated that the smell of cannabis was very strong when the tenant opened the door of the rental unit to them.

The landlord's assistant stated that they got into an argument with the tenant and that in the course of the argument the tenant opened their housecoat and pressed their chest into the landlord's assistant while asking the landlord's assistant if they were wearing lipstick. The landlord's assistant stated that the tenant was only wearing underwear and that they were very disturbed by the tenant's actions. The landlord's assistant stated that the landlord was also present during this incident.

The landlord confirmed the events that occurred with the tenant pushing their chest into the landlord's assistant aggressively and asking if the landlord's assistant was wearing lipstick. The landlord testified that she was also very disturbed with the tenant's actions.

The advocate questioned how the landlord knew the smell of cannabis was coming from the rental unit as there are multiple units on the floor.

The tenant denied that they were smoking cannabis. The tenant stated that they feel harassed from the landlord and the landlord's assistant and that they have been the subject of derogatory statements from the landlord's assistant.

The tenant did not deny the landlord and the landlord's assistant's version of events. The tenant stated they initiated a staring contest with the landlord's assistant, but admitted it was a juvenile thing to do, and tried to de-fuse the situation with humour by asking the landlord's assistant if they were wearing lipstick.

Analysis

Section 47 of the *Act* allows a landlord to issue a Notice to End Tenancy for Cause to a tenant if the landlord has grounds to do so. Section 47 of the *Act* provides that upon receipt of a Notice to End Tenancy for Cause the tenant may, within ten days, dispute the notice by filing an application for dispute resolution with the Residential Tenancy Branch.

If the tenant files an application to dispute the notice, the landlord bears the burden to prove the grounds for the One Month Notice. As the tenant disputed this notice on August 13, 2018, and since I have found that the One Month Notice was deemed served to the tenant on August 03, 2018, I find that the tenant has applied to dispute the One Month Notice within the time frame provided by section 47 of the *Act*. I find that the landlord has the burden to prove that they have sufficient grounds to issue the One Month Notice.

Regarding the smoking of cannabis, I find that the landlord has not sufficiently proven that the smell of cannabis was coming from the tenant's rental unit and that other occupants were affected as there are no witness statements; however, having reviewed all documentary evidence, including the affirmed testimony, I find that the tenant has unreasonably disturbed the landlord and the landlord's assistant, who I accept is also a landlord for the rental unit.

I find that it is undisputed that the tenant opened their housecoat and pressed their bare chest against the landlord's assistant in front of the landlord. Based on a balance of probabilities, I accept the landlord's testimony that this action on the part of the tenant appeared aggressive in nature. I find that this type of uninvited contact from the tenant, regardless of their intention, is unreasonable when in a tense discussion regarding their tenancy. In consideration of the above, I find that the landlord and the landlord's assistant were unreasonably disturbed by the tenant's actions.

For the above reasons, I find that the landlord has sufficient grounds to issue the One Month Notice and to end this tenancy for cause. Therefore, the Application to set aside the One Month Notice dated July 31, 2018, is dismissed without leave to reapply.

Section 55(1) of the *Residential Tenancy Act* provides that if a tenant makes an application to set aside a landlord's notice to end a tenancy and the application is dismissed, the Arbitrator must grant the landlord an order of possession if the notice complies with section 52 of the *Act*. I find that the One Month Notice complies with section 52 of the *Act*.

As the landlord testified that the tenant has paid the monthly rent for October 2018, I grant an Order of Possession to the landlord effective as of October 31, 2018.

The landlord and the tenant are at liberty to mutually agree to end the tenancy earlier than the above date providing that the landlord refunds any unused portion of October 2018 rent.

Conclusion

I dismiss the Application to cancel the landlord's One Month Notice dated July 31, 2018, without leave to reapply.

I grant an Order of Possession to the landlord **effective on October 31, 2018, after service of this Order** on the tenant. Should the tenant(s) or anyone on the premises fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

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 04, 2018

Residential Tenancy Branch