



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding H&L CONDO SERVICES INC.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes ET, FFL

Introduction

This dispute resolution proceeding was initiated by the landlord, who filed an application for dispute resolution on November 9, 2018 against the tenant. The landlord argues that the tenant is in breach of the *Residential Tenancy Act* (the “Act”) and seeks relief by way of an order ending the tenancy earlier than by other means under the Act, and an order of possession, both pursuant to section 56 of the Act.

A dispute resolution hearing was convened on December 18, 2018 and the landlord’s agent and a witness attended, and were given a full opportunity to be heard, to present testimony, to make submissions, and to call witnesses. The tenant did not attend.

The landlord’s witness testified that the Notice of Dispute Resolution Proceeding package was served on the tenant’s girlfriend (who, the witness noted, is also on the lease, and who the witness has met before) on November 11, 2018. Based on the testimony of the landlord’s witness I find that the tenant was served with the Notice of Dispute Resolution Proceeding pursuant to section 89(2)(c) of the Act.

While I have reviewed all oral and documentary evidence submitted that met the requirements of the *Rules of Procedure* and to which I was referred, only evidence relevant to the issues of this application are considered in my decision.

Issues

1. Is the landlord entitled to an order ending the tenancy early?
2. If yes, is the landlord entitled to an order of possession of the rental unit?
3. Is the landlord entitled to a monetary order for recovery of the filing fee?

Background and Evidence

The landlord's agent (hereafter the "landlord") testified that the tenancy commenced on September 1, 2018 and is fixed term tenancy ending on May 31, 2019. Monthly rent is \$2,050.00 and the tenant paid a security deposit of \$1,025.00. There is no pet damage deposit. A copy of the written tenancy agreement was submitted into evidence.

The landlord's argument is that the tenant's ongoing smoking of cannabis has significantly interfered with and unreasonably disturbed other building occupants to the extent that the occupants (other tenants) formerly residing in the rental unit located directly above the tenant's rental unit ended up vacating the suite due to the cannabis smoke entering their suite.

The landlord testified that there have been several follow-ups with the tenant since he moved into the rental unit regarding the smoking issue. There are, according to the landlord, "notices all over the building" prohibiting smoking, and, as referred to me by the landlord, there is a clause on page one of the tenancy agreement that states (in bold font on the agreement): "This is a non – smoking building and suite."

Submitted into evidence by the landlord are several emails between the occupants who resided above the tenant, to the landlord, in which the occupants complain of the cannabis smoke entering their suite from the tenant's rental unit below. An email dated October 14, 2018, from the tenant to the landlord reads as follows:

Our master bedroom smells like an ashtray and our bathroom smells like marijuana. It's pretty awful. It's much worse at night. It got better the day you spoke to him but now we smell it again. I am all congested and so is [other occupant]. We can't live like this. We are breathing it in all night long.

There are further emails dated October 25 and October 30 in which the cannabis smoke continues to be a problem.

In another email between the male occupant and the landlord, dated October 26, the occupant states that "He is smoking directly beneath our bathroom and the exhaust fan sucks it into our unit." And in another email dated October 26, the exasperated occupant remarks that "We are at the point that we are looking to move as we cannot tolerate our unit being hotboxed and our property ruined by smoke."

The landlord testified that the occupants formerly residing in the rental unit above the tenant's rental unit finally moved out on Saturday, December 15, 2018, on account of the tenant's cannabis smoking.

The landlord and the landlord's witness testified that they have personally asked the tenant to stop, to which the tenant denies smoking and, according to the landlord, sent a rather mocking email to the landlord regarding the issue. The landlord has warned the tenant "at least six times." At some point during the tenancy the landlord and the landlord's witness attended to the rental unit to warn the tenant, and when they looked around the rental unit observed a cannabis "joint" sitting on the BBQ on the balcony. Finally, the landlord's witness testified that the tenant has been issued a strata bylaw infraction notice for \$200.00 for the smoking, and a copy of the infraction notice issued by the strata to the landlord (and legal owner of the property) was submitted into evidence.

Analysis

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim.

In this case, the landlord seeks an order to end a tenancy early and an order of possession, pursuant to section 56 of the Act.

Section 56 (1) of the Act permits a landlord to make an application for dispute resolution to request an order (a) ending a tenancy on a date that is earlier than the tenancy would end if notice to end the tenancy were given under section 47, and (b) granting the landlord an order of possession in respect of the rental unit.

In order for me to grant an order under section 56 (1), I must be satisfied that

- (a) the tenant or a person permitted on the residential property by the tenant has done any of the following:
 - (i) significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property;
 - (ii) seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant;
 - (iii) put the landlord's property at significant risk;

- (iv) engaged in illegal activity that
 - (A) has caused or is likely to cause damage to the landlord's property,
 - (B) has adversely affected or is likely to adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant of the residential property, or
 - (C) has jeopardized or is likely to jeopardize a lawful right or interest of another occupant or the landlord;
- (v) caused extraordinary damage to the residential property, and
- (b) it would be unreasonable, or unfair to the landlord or other occupants of the residential property, to wait for a notice to end the tenancy under section 47 [*landlord's notice: cause*] to take effect.

In this case, the tenant's ongoing smoking of cannabis has without a doubt significantly interfered with and unreasonably disturbed other occupants of the residential property. Indeed, the occupants in the rental unit located directly above the tenant were so significantly interfered and unreasonably disturbed by the tenant's actions that they ended their tenancy and moved out. Based on the tenant's failure to abide by the terms of the tenancy agreement and his refusal to stop smoking even after repeated requests by the landlord lead me to find that it would be both unreasonable and unfair to both the landlord and other occupants of the residential property to wait for a notice to end the tenancy under section 47 of the Act.

I note that the landlord issued a One Month Notice to End Tenancy for Cause on November 11, 2018, on similar grounds as advanced in the landlord's claim before me, having considered the evidence and argument put forward in this hearing I need not consider the One Month Notice to End Tenancy for Cause further.

Taking into consideration all the undisputed oral testimony and documentary evidence presented before me, and applying the law to the facts, I find on a balance of probabilities that the landlord has met the onus of proving its claim for an order ending the tenancy early and for an order of possession.

As the landlord was successful in its application I grant it a monetary award of \$100.00. To that end, I order that the landlord may retain \$100.00 from the tenant's security

deposit in full satisfaction of this award.

Conclusion

I hereby order that the tenancy between the parties is ended effective immediately.

I hereby grant the landlord an order of possession, which must be served on the tenant and is effective two days from the date of service. This order may be filed in, and enforced as an order of, the Supreme Court of British Columbia.

This decision is final and binding, unless otherwise permitted under the Act, and is made on authority delegated to me by the Director of the Residential Tenancy Branch under section 9.1(1) of the Act.

Dated: December 18, 2018

Residential Tenancy Branch