



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 was scheduled in response to 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.

Landlord VT attended the hearing and confirmed she had authority to speak on behalf of landlord AG, who was not present. The tenants and the tenants' advocate (collectively the "tenants") attended the hearing. Each party was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

At the outset of the hearing, each party confirmed that they had received the other party's evidence. As neither party raised any issues regarding service of the application or the evidence, I find that both parties were duly served with these documents in accordance with sections 88 and 89 of the *Act*.

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?

Are the tenants' entitled to an order requiring the landlord to comply with the *Act*, *Regulation* or tenancy agreement?

Are the tenants' authorized to recover the filing fee for this application from the landlord?

Background and Evidence

Landlord AG assumed this tenancy October 1, 2018, when he purchased the property from landlord VT. Landlord VT now acts as property manager for landlord AG. As per the testimony of the parties, the tenancy began on January 28, 2018 on a fixed term until April 30, 2018 at which time the tenancy was renewed for another fixed term until July 31, 2018. The tenancy continued on a month-to-month basis. Rent in the amount of \$1,100.00 is payable on the first of each month. The tenants remitted a security and pet deposit in the total amount of \$1,100.00 at the start of the tenancy, which the landlord still retains in trust. The tenants continue to reside in the rental unit.

The tenants acknowledged receipt of the landlord's 1 Month Notice dated November 20, 2018. The grounds to end the tenancy cited in that 1 Month Notice were;

- the tenant or a person permitted on the property by the tenant has seriously jeopardized the health or safety or lawful right of another occupant or the landlord
- the tenant or a person permitted on the property by the tenant has put the landlord's property at significant risk
- 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 tenants' breach of a no-drug clause in the tenancy agreement. The landlord acknowledged the tenants are permitted to smoke tobacco products in two designated areas; however she contended that due to the no-drug clause in the tenancy agreement, the tenants are not permitted to smoke cannabis anywhere on the property. The landlord testified that since cannabis has become legal, she has observed the tenants smoke it in their designated smoking area. The landlord testified that on November 5, 2018, she informed the tenants in writing of the breach, specifically that smoking of cannabis on the property is prohibited. In the letter the landlord warned the tenants that further use of cannabis on the property would result in termination of the tenancy. The landlord testified that despite the warning letter, on November 15, 2018 she directly observed the tenants smoking cannabis on the property. Accordingly, the landlord issued the 1 Month Notice November 20, 2018.

In reply, the tenants testified that since receipt of the letter dated November 5, 2018 they have not smoked cannabis on the property. They testified that because they also smoke tobacco, this could be mistakenly identified as cannabis use.

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. Although cannabis is now legal, it is still considered a drug. The tenancy agreement signed by the parties specifically prohibits drugs and permits “smoking of tobacco products only.” I prefer the testimony of the landlord over that of the tenants. While at times tobacco cigarettes may resemble cannabis cigarettes, I find the distinct smell of cannabis cannot be mistaken for tobacco. For this reason, I am satisfied that the tenants were provided written notice of the breach and adequate time to correct it, yet failed to do so when the landlord observed them smoking cannabis on the property on November 15, 2018. I dismiss the tenants’ 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 parties’ testimony and the notice before me, I find the 1 Month Notice complies in form and content. As the tenants’ 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 tenancy is set to end, and as a landlord’s compliance may only be sought in relation to an ongoing tenancy I dismiss this claim as well. As the tenants were not successful in this application, I find that the tenants are not entitled to recover the \$100.00 filing fee paid for the application.

Conclusion

The tenants' entire application is dismissed, without leave to reapply.

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: January 14, 2019

Residential Tenancy Branch