



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding DOGWOOD HOLDINGS SOCIETIES
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC

Introduction

This teleconference hearing was scheduled in response to an application by the Tenants under the *Residential Tenancy Act* (the “Act”) to cancel a One Month Notice to End Tenancy for Cause (the “One Month Notice”).

Two agents for the Landlord (the “Landlord”) and both Tenants were present for the duration of the teleconference hearing, although only Tenant CB participated in the hearing. The Landlord confirmed receipt of the Notice of Dispute Resolution Proceeding package and a copy of the Tenants’ evidence. The Tenant confirmed receipt of the Landlord’s evidence package. Therefore, I find that both parties were duly served in accordance with the *Act* and the *Residential Tenancy Branch Rules of Procedure*.

All parties were affirmed to be truthful in their testimony and were provided with the opportunity to present evidence, make submissions and question the other party.

I have reviewed all oral and written evidence before me that met the requirements of the *Rules of Procedure*. However, only the evidence relevant to the issues and findings in this matter are described in this decision.

Issues to be Decided

Should the One Month Notice to End Tenancy for Cause be cancelled?

If the One Month Notice to End Tenancy for Cause is upheld, is the Landlord entitled to an Order of Possession?

Background and Evidence

The parties were in agreement as to the details of the tenancy. The tenancy agreement was submitted into evidence and confirms the details as stated by the parties. The tenancy began on March 1, 2016. Current monthly rent is \$890.00 and a security deposit of \$460.00 was paid at the outset of the tenancy. The original tenancy agreement was with Tenant CB and her partner and after the Tenant's partner moved out, the Tenant's mother, KB became the second tenant in February 2017.

The Landlord testified that on January 8, 2019 they served the Tenants with a One Month Notice by posting it on their door. The One Month Notice was submitted into evidence and states the following as the reason for ending the tenancy:

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

Further details were provided on the One Month Notice as follows:

Tenant warned to stop smoking in apartment as doing so bothered other tenants. Letter dated Nov 23 2018 informed tenants that if smoking continued that landlord may issue notice to end tenancy. At beginning of tenancy tenant signed smoke free housing addendum and agreed not to smoke on or in property.

(Reproduced as written)

The Landlord stated that the Tenants reside in a non-smoking building as stated on the tenancy agreement addendum signed at the start of the tenancy. The addendum was submitted into evidence and was signed February 16, 2016. The addendum states that this is smoke-free housing and that the Tenants understand and agree to comply with the smoke-free housing rules.

The Landlord also submitted into evidence a mutual agreement that was signed when Tenant KB moved into the rental unit. The agreement was signed by both Tenants on February 22, 2017 and states that the terms and conditions of the original tenancy agreement remain in place.

The Landlord provided testimony that they have received multiple verbal and written complaints regarding one of the Tenants smoking in the rental unit. They stated that due to this, they served the Tenants with a warning letter on November 23, 2018. The letter was submitted into evidence and provides a reminder to the Tenants that it is a non-

smoking building. The letter states that should the Tenants not stop smoking on the residential property, a One Month Notice will be served.

The Landlord testified that following the November 23, 2018 warning letter they received further complaints regarding smoking which led to their decision to serve the Tenants with a One Month Notice. A letter from another resident, dated January 7, 2019 was included as evidence and states that the resident is disturbed by the smell of smoke coming into their rental unit. This resident states their belief that the smoke is coming from Tenant KB as well as another resident in the building. The letter further notes that the resident is unsure whether the Tenants are smoking inside their rental unit or not, but that the smoke is entering the resident's unit and causing disturbance.

While the Landlord stated that they have received many verbal and written complaints regarding the Tenant smoking as well as seeing the Tenant smoking in the rental unit previously while attending to complete maintenance. They stated that they submitted the January 7, 2019 letter into evidence as this was the last letter they received prior to issuing the One Month Notice on January 8, 2019.

The Tenant testified that her mother was not required to sign a new tenancy agreement when she moved in and that neither of them were provided with the addendum that was signed at the start of the original tenancy agreement. The Tenant further stated that it was never explained to her mother that it was a non-smoking building and as she is now a Tenant it was the Landlord's responsibility to ensure she was aware when she moved in.

The Tenant stated that the first complaint she received about smoking was the November 23, 2018 letter. She also questioned the complaint letter dated January 7, 2018 as it does not say where the Tenant was seen smoking and does not confirm that the smell of smoke was coming from them.

The Tenant testified that her mother has not smoked inside the rental unit for a period of 6 months and has not smoked on the balcony of the rental unit since receipt of the November 23, 2018 warning letter. The Tenant submitted the One Month Notice and the tenancy agreement into evidence.

Analysis

As stated in Section 47(4) of the *Act*, a tenant has 10 days in which to dispute a One Month Notice. As the One Month Notice was posted on the Tenants' door on January 8, 2018 and the Tenants applied to dispute the notice on January 17, 2019, I find that they applied within the time allowable under the *Act*. Therefore, the matter before me is whether the One Month Notice is valid.

Rule 6.6 of the *Rules of Procedure* states that when a tenant applies to cancel a notice to end tenancy, the onus is on the landlord to prove, on a balance of probabilities, that the reasons for the notice are valid.

The parties seemed to be in agreement that previously the Tenant KB was smoking on the residential property, whether it was in the rental unit or on the balcony. However, the parties were not in agreement as to whether smoking in the rental unit has continued since the Tenants were served with a warning letter on November 23, 2018. The Tenant testified that since the letter, the other Tenant has not smoked anywhere on the residential property.

When parties provide conflicting testimony, it is up to the party with the burden of proof to submit sufficient evidence over and above their testimony to establish their claim. The Landlord submitted one letter of complaint from another resident of the building, dated January 7, 2019. While the letter notes that the resident smells smoke inside their rental unit and stated that they have seen Tenant KB smoking, there are no further details provided about where the Tenant was seen smoking and whether the concerns over smoke are from the Tenant or another resident on the property. As such, I do not find the January 7, 2019 letter to be compelling evidence to establish that Tenant KB has continued to smoke in the rental unit or on the residential property.

Therefore, I am not satisfied that the reason for the One Month Notice is valid due to insufficient evidence to establish that the Tenant has continued to smoke on the property since receiving the warning letter in November 2018. Accordingly, the Tenants were successful with their application to cancel the One Month Notice. The One Month Notice dated January 8, 2019 is hereby cancelled and of no force or effect. This tenancy continues until ended in accordance with the *Act*.

While the parties were not in agreement as to whether the Tenant KB was notified that this was a smoke-free building at the start of her tenancy, I find that both Tenants are now well aware regarding the Landlord's stance on smoking in the building or on the residential property. The Tenant confirmed that they received a copy of the tenancy agreement addendum regarding the smoke-free policy as part of the Landlord's

evidence package for this dispute resolution proceeding. As such, I caution the Tenants that should the Landlord find that they are not in compliance with the smoke-free policies, the Landlord may find cause to serve a new notice to end the tenancy. Should this occur, this decision may be used to demonstrate that the Tenants were aware of the smoke-free policy.

Conclusion

The One Month Notice dated January 8, 2019 is cancelled and of no force or effect. This tenancy continues until ended in accordance with the *Act*.

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: February 12, 2019

Residential Tenancy Branch