



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Brown Bros. Agencies Ltd.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC, FFT

Introduction

This hearing was convened as a result of the Tenant's Application for Dispute Resolution ("Application") under the *Residential Tenancy Act* ("Act") to cancel a One Month Notice to End Tenancy for Cause dated January 4, 2019 ("One Month Notice"), and to recover the cost of the filing fee in this matter.

The Tenant and an agent for the Landlord (the "Agent") appeared at the teleconference hearing and gave affirmed testimony. I explained the hearing process to the Parties and gave them an opportunity to ask questions about the hearing process. During the hearing the Tenant and the Agent were given the opportunity to provide their evidence orally and respond to the testimony of the other Party.

I reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch Rules of Procedure; however, only the evidence relevant to the issues and findings in this matter are described in this decision.

Neither party raised any concerns regarding the service of the Application and the documentary evidence.

Preliminary and Procedural Matters

The Parties provided their email addresses at the outset of the hearing and confirmed their understanding that the decision would be emailed to both Parties.

The Tenant submitted an Amendment to her Application for Dispute Resolution on January 18, 2019; however, she did not indicate anything about her Application that she wanted to amend; rather she provided more detail about why she was disputing the One Month Notice. This is not the purpose of an Amendment, and further, there is no evidence before me

that it was served on the Landlord. As a result, I deny the Amendment and do not consider this as evidence before me.

Issue(s) to be Decided

- Is the Tenant entitled to an order cancelling the One Month Notice?
- If not, is the Landlord entitled to an order of possession?
- Is the Tenant entitled to the recovery of the cost of the filing fee under the *Act*?

Background and Evidence

The Parties agreed that as set out in the tenancy agreement, the tenancy started on August 1, 2018, and had a one-year fixed term, which would become a month-to-month tenancy. The rent is \$1,575.00 per month, including \$25.00 for a parking fee, and due on the first day of each month. The Tenant paid a security deposit of \$775.00.

The Landlord submitted a document entitled "Proof of Service" of a notice to end tenancy, which says the Tenant was served with the One Month Notice on January 4, 2019, by attaching a copy on the door or to another conspicuous place. The Proof of Service names a witness who attests to this service and who signed the form on January 4, 2019. The Tenant did not dispute this. The One Month Notice gives an effective date of February 28, 2019.

The Agent said that the reason the Landlord served the Tenant with the One Month Notice was because they received numerous complaints about the Tenants having been smoking in and outside of the rental unit. The Agent said there is an addendum to the tenancy agreement which prohibits smoking in and around the building. Further, the Agent said the Landlord has given the Tenant verbal warnings about the need to stop this behaviour.

The Landlord submitted a copy of the no smoking addendum, which includes the following:

The Landlord and the Tenant agree that:

Due to the increased risk of fire, increased maintenance costs and the known health effects of second-hand smoke, smoking and vaping are prohibited in any area of the property, both private units and common areas, whether inside or outside, extending to the property line. This policy applies to all owners, tenants, guests and service persons.

This amendment and all terms form part of the Rental Agreement signed by the tenant and all terms are considered to be a fundamental part of the rental agreement and any violation of the terms will constitute a breach of the rental agreement and may result in the tenant being given a notice of termination, allowed under the Residential Tenancy Act.

In the hearing, the Tenant said:

Myself, my husband and my daughter live here – abiding by the rules and lease; we are not partiers, per say. The only party was on my daughter's tenth birthday last weekend. We make no noise and are not disruptive toward anyone. We are friendly people abiding by the rules and laws laid out in the lease.

The Agent responded by saying, "The issue is not noise disturbance, but it is smoking in the unit, despite the no smoking addendum." She went on to say that the Landlord has received letters and text messages from other tenants complaining that the Tenants were smoking in the unit. The Agent said that because it is in the addendum, it is a breach of a material term in the tenancy agreement.

The Tenant said that she understands the rules and the reason why they are here. She said:
I have incense and an essential oil machine. I'm from Ontario and opening windows is not a hindrance there. No one in this unit is smoking or vaping. We have a child. That's not something that a parent would or should do as far as I'm concerned. We are doing everything as tenants and people we are supposed to. No one is here during the day. We are home after 6 pm. There is no smoking within our unit. I have seen cigarette butts from above the landing outside our patio area and I've recently seen butts outside in the grass.

The Agent said,

Due to the fact that other people are complaining, we have to take it seriously, because it is a non-smoking building. We have received numerous complaints about cigarette smoke from this unit. Because there are complaints, we have to follow through with them.

The Agent directed my attention to documents the Landlord submitted with three complaints from different occupants of the residential property. These include the following:

Since the tenants in [rental unit] moved in, there is a constant smell of cigarette smoke coming from their unit. I know they smoke in their unit because I have seen them at the window and blow smoke outside, while I was outside on the curb smoking (following the rules). This is a constant problem, and makes me embarrassed to come through the front door with my guests. They also open the glass above the front door to 'air' it out. Them doing this causes the heat to escape the building, and lets bugs get in. I hope something can be done about this because I don't enjoy coming home to hallways wreaking of smoke

[signed with unit and telephone numbers]

Another letter dated October 17, 2018 states:

I am writing this note to complain about [rental unit].

The smoke coming out of the suite is filling the front hallway, and it smells like cigarette smoke.

The smokers outside have moved somewhat so people don't walk through a smoke field, but what's the point if they come into the building and its full of smoke.

[signed with unit and telephone numbers]

A third letter dated January 23, 2019 from an occupant of a different unit made the same complaint about the Tenants.

Analysis

Section 47 of the *Act* allows a landlord to end a tenancy by giving notice to end the tenancy if one or more of the following applies:

(1) A landlord may end a tenancy by giving notice to end the tenancy if one or more of the following applies:

...

- (d) the tenant or a person permitted on the residential property by the tenant has
 - (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, or
 - (iii) put the landlord's property at significant risk;

After considering all of the written and oral evidence submitted in this hearing, I find that the Landlord has provided sufficient evidence to show that the Tenant has significantly interfered with or unreasonably disturbed another occupant(s) in the non-smoking building. I find that the complaint letters from neighbours establishes that the behaviour was happening on a regular basis and that it unreasonably disturbed other building occupants.

I find the Landlord has established sufficient cause, pursuant to section 47 of the *Act*, to end the tenancy, because the Tenant or a person permitted on the property by the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord. As a result, the Tenant's Application to cancel the One Month Notice is dismissed without leave to reapply and I therefore decline to grant the Tenant the recovery of the \$100.00 filing fee.

I also find that the One Month Notice issued by the Landlord complies with section 52 of the Act. Given the above, and pursuant to section 55 of the *Act*, the Landlord is entitled to an Order of Possession.

Conclusion

The Tenant's Application to cancel the One Month Notice, issued on January 4, 2019, is dismissed without leave to reapply.

The Landlord is entitled to an order of possession pursuant to section 55 of the Act, effective **two 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: March 11, 2019

Residential Tenancy Branch