



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding MEICO PROPERTY MGM
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes

CNC

Introduction

This hearing dealt with 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.

Both parties attended the hearing via conference call and provided affirmed testimony. Both parties confirmed that the tenant served the landlord's agent (the landlord) in person on February 11, 2019. The tenant stated that no documentary evidence was submitted despite the tenant's application containing a copy of a 1 month notice dated January 14, 2019. Both parties confirmed the landlord served the tenant with their documentary evidence package via Canada Post Registered Mail on February 20, 2019. Neither party raised any service issues. I accept the undisputed affirmed evidence of both parties and find that both parties have been sufficiently served as per section 90 of the Act.

Preliminary Issue(s)

At the outset, the landlord clarified that the tenant had not properly named the landlord and provided the wrong address for the landlord in the application for dispute. Discussion with the tenant confirmed the landlord's claim. As such, the tenant's application shall be amended to reflect the proper named landlord and the landlord's mailing address. The landlord's agent provided her email address for delivery of the decision.

During the hearing the landlord's agent argued that the tenant's application for dispute was filed outside of the allowed time period of 10 days. Discussions between both parties confirmed that the tenant received the 1 month notice dated January 14, 2019 on January 14, 2019 in person. The tenant argued that he applied within the allowed 10 day period on either January 23rd or 24th. However, a review of the Residential Tenancy Branch File shows that it was submitted and processed on January 28, 2019. The tenant argued that there must be an error on the part of the Residential Tenancy Branch (RTB) for the submission date. A review of the RTB case

management system confirms a submission date of January 28, 2019. A review of the Tenant's Application package shows that Service BC submitted via facsimile to the RTB on January 24, 2019 which included a fee waiver application dated January 24, 2019. No further details of the fee waiver process was provided. I find in the absence of any other evidence that the tenant filed his application on the 10th day (January 24, 2019) after receiving the 1 month notice on January 14, 2019 and as such did file for dispute within the allowed timeframe. The hearing shall continue.

Issue(s) to be Decided

Is the tenant entitled to an order cancelling the 1 month notice?

Background and Evidence

While I have turned my mind to all the documentary evidence, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of the applicant's claim and my findings are set out below.

This tenancy began on August 1, 2006 for a fixed term until August 31, 2007 and then thereafter on a month-to-month basis as per the submitted copy of the signed tenancy agreement. The monthly rent was \$425.00 payable on the 1st day of each month and a security deposit of \$212.50 was paid on July 25, 2006.

Both parties confirmed that on January 14, 2019, the landlord served the tenant with the 1 Month Notice dated January 14, 2019 in person. The 1 Month Notice sets out an effective end of tenancy date of February 28, 2019 and that it was being given as:

- the tenant or person permitted on the property by the tenant has:
 - significantly interfered with or unreasonably disturbed another occupant or the landlord.

The details of cause listed on the notice state:

Tenant consistently smokes marijuana inside the rental unit which affects neighboring units as well as makes the hallway smell strongly affecting residents in the common area. Three caution notices & verbal warnings have been given to the tenant and it still happens.

In support of this claim the landlord has provided copies of:

“Caution Notice to Tenant” dated December 7, 2018 for “Smoking Cannabis” and the details were “Continuous Use of Cannabis is causing discomfort to other tenants...”

“Caution Notice to Tenant” dated February 15, 2018 for “Smoking Cannabis” and “Continued use of Cannabis after several request to stop smoking in suite.”

“Caution Notice to Tenant” dated November 1, 2017 for “Continuous use of cannabis causing discomfort to surrounding neighbors”.

The tenant disputed the notice stating “others in the bldg smoke pot sometimes I was’nt even home when she smelt the odor.” The tenant has disputed that he cannot smell the marijuana smoke. During discussion with both parties, the tenant admitted that he did smoke marijuana, just not on the days claimed by the landlord. The tenant stated that been given the 1 month notice he has stopped smoking marijuana in the rental property. The tenant also argued that he has been having issues with the property management and believes “they are out to get him”. During the hearing the tenant provided testimony that he did not smoke marijuana on the rental property.

The landlord’s agent, V.S. stated that she resides in unit next to the tenant’s and has on each occasion investigated the source of marijuana smoke. The landlord’s agent stated that she shares a wall with the tenant and has gone the tenant’s door to get him to stop smoking in the rental unit. The landlord’s agent provided affirmed testimony that when the tenant opens his door, she can smell the marijuana smoke coming from the unit. The landlord also argues that the tenant since being served with the 1 month notice continues to smoke marijuana on the rental property.

Analysis

In an application to cancel a 1 Month Notice, the landlord has the onus of proving on a balance of probabilities that at least one of the reasons set out in the notice is met.

In this case, both parties confirmed that the landlord served the tenant with a 1 month notice to end tenancy for cause dated January 14, 2019 in person on January 14, 2019. The landlord has claimed that the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord by smoking marijuana inside the rental unit and in the common areas of the rental property. The landlord has claimed that verbal warnings were given to stop, followed by 3 written “Caution Notice(s)” which was followed lastly by the notice to end tenancy dated January 14, 2019. The tenant confirmed receipt of each of the “cautions” and has disputed the notice stating that he does not smell the marijuana smoke in the rental unit and has since stopped smoking marijuana since the 1 month notice was received. The tenant also claimed that he was not even present in the building during one complaint filed.

In this case, I accept the affirmed testimony of both parties and find on a balance of probabilities that I prefer the evidence of the landlord over that of the tenant. The landlord provided clear and concise direct testimony of her experience on providing multiple warnings to the tenant regarding the smell of marijuana in the rental property. I accept the undisputed documentary

evidence of the landlord that multiple caution notice(s) were served to the tenant following multiple verbal cautions regarding the smoking of marijuana. I find that the tenant provided conflicting and contradictory testimony that he smoked marijuana in the rental unit. On this basis, I find that the tenant's application is dismissed. The 1 month notice dated January 14, 2019 is upheld. Pursuant to section 55 of the Act, the landlord is granted an order of possession to be effective 2 days after the tenant is served as the effective end of tenancy date has now passed.

Conclusion

The tenant's application is dismissed.
The landlord is granted an order of possession.

This order must be served upon the tenant. Should the tenant fail to comply with the order, the order may be filed in the Supreme Court of British Columbia and enforced as an order of that Court.

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 08, 2019

Residential Tenancy Branch