



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding RAAMCO INTERNATIONAL PROPERTIES CANADIAN LTD. and
[tenant name suppressed to protect privacy]

DECISION

Dispute Codes FFL, OPC (Landlord)
 CNC, FFT (Tenant)

Introduction

This hearing was convened by way of conference call in response to cross Applications for Dispute Resolution filed by the parties.

The Landlord filed the application June 27, 2019 (the “Landlord’s Application”). The Landlord applied for an Order of Possession based on a One Month Notice delivered May 21, 2019. The Landlord also sought reimbursement for the filing fee.

The Tenant filed the application July 24, 2019 (the “Tenant’s Application”). The Tenant applied to dispute a One Month Notice dated July 17, 2019 (the “Notice”). The Tenant sought reimbursement for the filing fee.

The Tenant appeared at the hearing with the Advocate, the Occupant who is his wife, D.A. to translate and the Witness. The Witness exited the room until required. The Advocate later advised that the Tenant did not wish to call the Witness.

The Building Manager appeared for the Landlord.

The Tenant’s Application named three additional individuals as tenants. The tenancy agreement shows these individuals are occupants and not tenants. I removed these individuals from the Tenant’s Application.

I have used the Landlord’s name from the Landlord’s Application in the style of cause as it differs from that used on the Tenant’s Application.

I explained the hearing process to the parties who did not have questions when asked. The parties provided affirmed testimony.

Both parties submitted evidence prior to the hearing. I addressed service of the hearing packages and evidence and no issues arose.

The Building Manager agreed that the One Month Notice delivered May 21, 2019 was cancelled in a prior hearing and therefore the Landlord's Application is now a moot point. Given this, I dismiss the Landlord's Application without leave to re-apply.

The parties were given an opportunity to present relevant evidence, make relevant submissions and ask relevant questions. I have considered the documentary evidence and oral testimony of the parties. I will only refer to the evidence I find relevant in this decision.

Issues to be Decided

1. Should the Notice be cancelled?
2. If the Notice is not cancelled, should the Landlord be issued an Order of Possession?
3. Is the Tenant entitled to reimbursement for the filing fee?

Background and Evidence

A written tenancy agreement was submitted and the parties agreed it is accurate. The tenancy started November 01, 2000 and is a month-to-month tenancy. The parties agreed rent is currently \$1,113.00 per month. Rent is due on or before the first day of each month.

The Notice was submitted. It includes the following grounds:

1. Tenant or a person permitted on the property by the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord and seriously jeopardized the health or safety or lawful right of another occupant or the landlord; and

2. Tenant or a person permitted on the property by the tenant has engaged in illegal activity that has, or is likely to, adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant.

There was no issue that both pages of the Notice were posted to the door of the rental unit July 17, 2019 and that the Tenant received it the same day.

The Building Manager relied on complaints from other tenants in the building submitted as the basis for the Notice. He testified that the Landlord has received complaints about noise, spitting, items in the hallway and smoking marijuana in relation to the Tenant and occupants of the rental unit. The Building Manager testified that other tenants cannot enjoy their units and must keep their windows closed because of the Tenant and occupants of the rental unit smoking marijuana on the balcony of the unit.

The Building Manager testified as follows in response to written submissions of the Tenant. The complaints submitted are from other tenants and are not fabricated by him. The noise complaint from May 12, 2019 related to a family dispute and not an ambulance attending the rental unit as claimed by the Tenant. The issue with the Tenant leaving items in the hallway was not a one-time thing but occurred eight different times as shown in the photos.

In relation to the ground stating 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 Building Manager said this relates to the Tenant and occupants smoking marijuana on the balcony of the rental unit. He said other tenants cannot breathe and must close their windows due to the smoke.

The Building Manager could not point to any illegal activity by the Tenant or occupants of the rental unit.

The Landlord submitted numerous complaints made by other tenants in the building from 2017.

The following relevant complaints from 2018 have been submitted:

- Complaint about someone from the rental unit putting a cigarette butt in a flower pot on April 06, 2018

- A Notice issued about someone from the rental unit dropping a dirty napkin in a flower pot in the lobby on April 05, 2018

The following relevant complaints from 2019 have been submitted:

- 12 complaints between May and July from three different units about the Tenant or occupants of the rental unit smoking marijuana on the balcony, the last complaint being made July 22, 2019
- Two complaints from two different units about noise from the Tenant, occupants of the rental unit or the rental unit
- One complaint about the Tenant or occupants of the rental unit dumping water over the balcony

The Advocate made the following submissions. Almost all the noise complaints are from 2017. Noise has not been an issue since. There are only a few recent noise complaints. The noise complaint from May of 2019 relates to an incident where the Tenant was having a heart attack which did lead to noise from the rental unit. Some of the noise complaints relate to noise from a child that has not occupied the rental unit since May.

The Advocate made the following further submissions. The Tenant and occupants are cooperative. The behaviour that led to the Landlord issuing warnings stopped once the Tenant received the warnings. The Tenant has not received any further warnings since July of 2017. There are almost no complaints from 2018.

The Advocate made the following further submissions. The Tenant did not receive any warning about an issue with smoking marijuana. The first time the Tenant was told this was an issue was in the Notice. Smoking is permitted in the building. The Tenant and occupants have stopped smoking marijuana on the balcony since the Notice was issued. The Landlord should have taken other steps to address the smoking issue before issuing the Notice.

D.A. is the daughter of the Tenant and Occupant and testified as follows. The Tenant and Occupant have been living at the rental unit for 20 years and there were no problems previously. The Tenant and occupants addressed the issues raised when they were given notice of an issue.

I have reviewed the written submissions of D.A. for the Tenant which include the following points. She believes the complaints come from one tenant or are being written by the Building Manager. The May 12, 2019 incident involved the Tenant having a heart attack which led to noise. Nobody can verify that the Tenant or occupants are spitting in the building. The issue with items in the hallway was resolved in 2016 and never occurred again. Others in the building smoke.

In reply, the Building Manager disputed that a heart attack led to the noise complaint in May and said it was a personal fight. He said all new tenancy agreements include a no-smoking clause but acknowledged that this does not apply to previous tenancy agreements including the agreement in this matter.

I asked the Building Manager why the Tenant was not given a warning about smoking being an issue. The Building Manager said this was clear in the May 21, 2019 One Month Notice. I read the grounds out to the Building Manager who then acknowledged that the May 21, 2019 One Month Notice did not relate to smoking.

Analysis

The May 21, 2019 One Month Notice was cancelled because the Landlord did not submit a copy of it for the hearing. The arbitrator did not consider the grounds for the One Month Notice and therefore I find it appropriate to consider all the complaints submitted and not only those received after May 21, 2019.

There was no issue that the Tenants received the Notice July 17, 2019. The dispute was filed July 24, 2019, within the time limit set out in section 47(4) of the *Residential Tenancy Act* (the "*Act*").

The Landlord has the onus to prove the grounds for the Notice pursuant to rule 6.6 of the Rules of Procedure. The standard of proof is on a balance of probabilities.

The Notice was issued pursuant to sections 47(1)(d) and (e) of the *Act* which state:

47 (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...

(e) the tenant or a person permitted on the residential property by the tenant has engaged in illegal activity that...

(ii) 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...

The Building Manager could not point to any illegal activity on the part of the Tenant or occupants of the rental unit and therefore has failed to prove this ground in the Notice.

The Landlord has not submitted sufficient evidence that the Tenants or occupants of the rental unit smoking marijuana on the balcony has seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant. There is insufficient evidence that other tenants cannot breathe because of the smoke. I find the complaints are more about the smell than they are about the smoke impacting health, safety or a lawful right of other tenants. I am not satisfied this ground in the Notice has been proven.

The remaining ground is significant interference with or unreasonable disturbance of other occupants or the Landlord. I am not satisfied this ground has been proven. The issues from 2016 and complaints from 2017 are too dated to justify ending the tenancy at this point in time. I have considered whether the behaviour noted in the complaints from 2017 has continued. I am not satisfied it continued in 2018 given the relevant complaints include putting a cigarette butt and dropping a dirty napkin in a flower pot. Although these issues may amount to inconsiderate behaviour, I am not satisfied these issues significantly interfered with or unreasonably disturbed others. I do not find the remaining issues from 2018 relevant.

In relation to the 2019 complaints about the Tenant or occupants of the rental unit smoking marijuana on the balcony, I acknowledge that there are numerous complaints from three different units in the building. I accept that these are from other tenants and

not fabricated by the Building Manager as there is no evidence to suggest that they are fabricated.

However, it is my understanding that the Tenant and occupants in the rental unit are not prohibited from smoking by the tenancy agreement or other building rules. The Landlord did not issue the Tenant a warning about the smoking being an issue or bothering other tenants. In these circumstances, I accept that the Tenant and occupants of the rental unit did not know the smoking was an issue until they received the Notice on July 17, 2019. There is only one complaint submitted after this date on July 22, 2019. Although I do find that the Tenant and occupants of the rental unit should have known as of July 17, 2019 that smoking marijuana on the balcony is an issue, I cannot find that one further incident is sufficient to end the tenancy.

However, the Tenant and occupants of the rental unit are now on notice that the smoking is an issue and is disturbing other tenants. Whether smoking is prohibited or not, disturbing other tenants can result in the tenancy ending pursuant to a One Month Notice.

I acknowledge that there have been two further noise complaints made in 2019. I do not find two further noise complaints in one and a half years to be sufficient to end the tenancy based on a significant interference or unreasonable disturbance of others.

In relation to the complaint about dumping water over the balcony, I am not satisfied it amounts to a significant interference or unreasonable disturbance of others in the absence of further explanation or evidence showing this.

I have considered the complaints together and whether together they amount to a significant interference or unreasonable disturbance of others. I am not satisfied that they do given the dated nature of the 2017 complaints, absence of serious complaints in 2018 and small number of complaints in 2019. I consider there to be a small number of complaints in 2019 as I am not including the 11 complaints about smoking made when the Tenant was unaware that smoking was an issue.

In the circumstances, I am not satisfied the Landlord has proven the grounds for the Notice. The Notice is cancelled. The tenancy will continue until ended in accordance with the *Act*.

Given the Tenant was successful, I award him reimbursement for the \$100.00 filing fee pursuant to section 72(1) of the *Act*. The Tenant can deduct \$100.00 from one future rent payment pursuant to section 72(2) of the *Act*.

Conclusion

The Landlord has failed to prove the grounds for the Notice. The Notice is cancelled. The tenancy will continue until ended in accordance with the *Act*.

Given the Tenant was successful, I award him reimbursement for the \$100.00 filing fee. The Tenant can deduct \$100.00 from one future rent payment.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Act*.

Dated: August 23, 2019

Residential Tenancy Branch