



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding NECHAKO VIEW SENIOR CITIZENS HOME
SOCIETY and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC

Introduction

On August 6, 2019, the Tenants applied for a Dispute Resolution proceeding seeking to cancel a One Month Notice to End Tenancy for Cause (the “Notice”) pursuant to Section 47 of the *Residential Tenancy Act* (the “Act”).

The Tenants attended the hearing and had L.H. attend as an advocate for the Tenants. T.S. attended the hearing as an agent for the Landlord. All in attendance provided a solemn affirmation.

The Tenants advised that they served the Landlord with the Notice of Hearing package by hand on or around August 14, 2019 and T.S. acknowledged that this package was received. Based on this undisputed evidence, and in accordance with Sections 89 and 90 of the *Act*, I am satisfied that the Landlord was served the Notice of Hearing package.

L.H. advised that he served the Tenants’ evidence to the Landlord by mail on September 18, 2019 and T.S. confirmed that he received this. As service of this evidence complies with the timeframe requirements of Rule 3.14 of the Rules of Procedure, I have accepted this evidence and will consider it when rendering this decision.

T.S. advised that he did not submit any evidence for consideration on this file.

All parties were given an opportunity to be heard, to present sworn testimony, and to make submissions. I have reviewed all oral and written submissions before me; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

I note that Section 55 of the *Act* requires that when a Tenant submits an Application for Dispute Resolution seeking to cancel a notice to end tenancy issued by a Landlord, I must consider if the Landlord is entitled to an Order of Possession if the Application is dismissed and the Landlord has issued a notice to end tenancy that complies with the *Act*.

Issue(s) to be Decided

- Are the Tenants entitled to have the Notice cancelled?
- If the Tenants are unsuccessful in cancelling the Notice, is the Landlord entitled to an Order of Possession?

Background and Evidence

While I have turned my mind to the accepted documentary evidence and the testimony of the parties, not all details of the respective submissions and/or arguments are reproduced here.

All parties agreed that the tenancy started on May 1, 2015 and that rent is currently established at \$530.00 per month, due on the first day of each month. A security deposit of \$245.00 and a pet damage deposit of \$245.00 were also paid. A partial copy of the written tenancy agreement was submitted as documentary evidence.

All parties agreed that the Notice was served to the Tenants by hand on July 27, 2019. The reasons the Landlord served the Notice are because the “Tenant has allowed an unreasonable number of occupants in the unit/site” and 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.” The Notice indicated that the effective end date of the tenancy was August 31, 2019.

T.S. advised that he received complaints from other tenants of the building because the Tenants’ son is living with the Tenants and this is contradictory to the tenancy agreement, especially given that the building is for people that are 55 years and older. He stated that the son’s activity was monitored, and it was determined that he lived in the rental unit for 15 days in June, 15 days in July, and 15 days in August 2019. His

bicycle was observed parked overnight each time and then it would be gone in the morning.

Tenant T.C. advised that he had a note from his son's landlord confirming that his son rents his own accommodation, that he lives there, and that he has a job. However, he did not submit a copy of this note as evidence for consideration.

With respect to the second reason on the Notice, T.S. advised that the tenancy agreement contained an addendum stipulating that excessive behaviour with substance abuse was not allowed in the rental unit. He stated that he has received many complaints from other tenants of the building because of the constant smell of cigarette and marijuana smoke emanating from the rental unit. He stated that he has four letters of tenant complaints with respect to this issue and that the Landlord has lost three months of rent because a tenant moved in next door to the Tenants and could not live there due to the severity of the smoke. As a result, this tenant moved out and the Landlord has been unable to re-rent the unit. He stated that there was another lady that will likely move if the situation is not rectified. He testified that he warned the Tenants verbally in July 2018 to refrain from smoking in the rental unit and he issued them a warning letter in June 2019 to stop; however, there has been no change in the Tenants' behaviour. He did receive an inflammatory response from the Tenants referring to the Landlord as "communists". He stated that the tenants of the building are frustrated, scared, and intimidated.

He read from the complaint letters of the other tenants, which echoed mostly the same sentiments. They list the smell of smoke as being unbearable, that friends and family will no longer visit due to this, and that they will be forced to move if the situation is not corrected. As well, there is a high volume of traffic that goes in and out of the rental unit, sometimes for only mere minutes and this activity is suspicious. They also referred to the rental unit as a "party shack."

L.H. advised that the tenancy agreement does not prohibit smoking in the rental unit or on the residential property and this is evident as many other tenants, including the building caretaker, smoke in the building. He stated that the Tenants "do not remember" if they were given any verbal or written warnings by the Landlord. He reiterated that the Landlord has not submitted any evidence to corroborate his reasons for serving the Notice.

Tenant T.C. advised that they have never threatened any tenants of the building and that they only attempt to help others. He stated that they were not given any written warning and that he “guessed so” when he was asked if he received a verbal warning. However, he then contradictorily stated that they never had any conversations with the Landlord about not smoking. He confirmed that they smoke in the rental unit “all the time” and they have done this since they moved into the rental unit.

Analysis

Upon consideration of the evidence before me, I have provided an outline of the following Sections of the *Act* that are applicable to this situation. My reasons for making this decision are below.

In considering this matter, I have reviewed the Landlord’s Notice to ensure that the Landlords have complied with the requirements as to the form and content of Section 52 of the *Act*. In reviewing this Notice, I am satisfied that the Notice meets all of the requirements of Section 52 and I find that it is a valid Notice.

I find it important to note that a Landlord may end a tenancy for cause pursuant to Section 47 of the *Act* if any of the reasons cited in the Notice are valid. Section 47 of the *Act* reads in part as follows:

Landlord's notice: cause

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

(c) there are an unreasonable number of occupants in a rental unit;

(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,

With respect to these reasons on the Notice, I find it important to note that when two parties to a dispute provide equally plausible accounts of events or circumstances

related to a dispute, the party making the claim has the burden to provide sufficient evidence over and above their testimony to establish their claim.

Regarding the issue with an additional occupant living in the rental unit, T.S. has not provided any evidence to support his claim of another person, not authorized on the tenancy agreement, that is living in the rental unit. As a result, I do not find that the Landlord has provided sufficient evidence to satisfy me of the legitimacy of the reasons on this point.

Regarding the smoking issue, I find it important to note that there is not a no smoking clause in the tenancy agreement. Therefore, there cannot be an enforceable term prohibiting the Tenants from smoking inside the rental unit. However, a tenancy may still end by virtue of this Notice if the Tenants choose to smoke in the rental unit and it significantly, negatively impacts the Landlord or other occupants of the building. Given that T.S. has not provided any evidence to substantiate this reason for serving the Notice, I do not find that T.S.' solemnly affirmed testimony is compelling enough to warrant an end to the tenancy for this reason.

Based on what was presented during the hearing, the consistent and undisputed evidence is that the Tenants do smoke regularly and consistently in the rental unit. While the Tenants are permitted to smoke in the rental unit, the Tenants should be aware that this could potentially form the basis for a future Notice. Consequently, the Tenants are on formal notice that continued behaviours or actions that are unacceptable or inappropriate may potentially jeopardize their tenancy.

Regardless, as I am not satisfied that the Landlord has sufficiently substantiated the grounds for ending the tenancy under the reasons that "there are an unreasonable number of occupants in a rental unit" or that the Tenant has "significantly interfered with or unreasonably disturbed another occupant or the landlord", I am not satisfied of the validity of the reasons for service of the Notice. Ultimately, I find that the Notice is of no force and effect.

Conclusion

Based on the above, I hereby order that the One Month Notice to End Tenancy for Cause of July 27, 2019 to be cancelled and of no force or effect. The tenancy shall continue 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: October 9, 2019

Residential Tenancy Branch