



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding LMLTD HOLDINGS CORPORATION
AMACON 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 One Month Notice to End Tenancy for Cause (the "**Notice**") pursuant to section 47.

The landlord was represented at the hearing by its property manager ("**BC**") and its onsite caretaker ("**DT**"). The tenant represented herself at the hearing. Both parties were each given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

The tenant testified, and BC confirmed, that the tenant served the landlord with the notice of dispute resolution form and supporting evidence package. BC testified, and the tenant confirmed, that the landlord served the tenant with its evidence package. I find that all parties have been served with the required documents in accordance with the Act.

Issue(s) to be Decided

Is the tenant entitled to an order cancelling the Notice?

Background and Evidence

While I have considered the documentary evidence and the testimony of the parties, not all details of their submissions and arguments are reproduced here. The relevant and important aspects of the parties' claims and my findings are set out below.

Neither party entered a copy of the tenancy agreement into evidence. However, the parties agree that they entered into a written tenancy agreement starting June 1, 2019. Monthly rent is \$795 and is payable on the first of each month. The tenant paid the landlord a security deposit of \$397.50. The landlord still retains this deposit.

BC testified that the Notice was posted on the tenant's door July 26, 2019. The tenant confirmed she received it.

The Notice indicates an effective move-out date of August 31, 2019. The tenant confirmed receipt of the Notice.

The grounds to end the tenancy cited in that Notice were:

- 1) the tenant has allowed an unreasonable number of occupants in the unit/site;
- 2) the tenant or a person permitted on the property by the tenant has
 - o significantly interfered with or unreasonably disturbed another occupant or the landlord;
 - o seriously jeopardized the health or safety or lawful right of another occupant or the landlord;
- 3) breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so;

The Notice provided additional details of the causes leading to its issuance:

The tenant's have received written warnings about smoking marijuana or any type of cigarettes, including vaping, in their suite. They have failed to comply to the written requests and their son, Jesse Mazar, is still residing in the suite, which he is not supposed to be living there at all. There are several letters from other tenants in the building, within close proximity to their suite and the actions of the tenants of apt. # 118, are putting another tenant's life in jeopardy, due to her illness. This notice was served with a witness present.

Marijuana

BC testified that the landlord had received numerous complaints that the tenant was smoking marijuana in the rental unit.

In support of its claim the landlord entered a "breach letter" dated March 15, 2019 relating to a prior rental unit the tenants lived in that was managed by the landlord. In that letter, the landlord wrote that "it was brought to our attention that your suite emits heavy smell of smoke".

The landlord also entered a letter sent to the tenant on June 17, 2019 titled "Notice – Building Smoking Rules". In this letter, the landlord wrote:

Please consider this letter as a final warning and failure to follow our Smoking rules will lead to a possible eviction.

It was recently reported your unit [omitted] had a heavy smell of cigarette and marijuana smoke coming from it. We do permit smoking on balconies and/or outside of building if done responsibly. **(No discarding cigarettes onto common property).**

Smoking rules tenants must abide by at any of [the landlord's] Properties:

Smoking is not permitted in any common areas at any time.

The buildings common areas are designated as smoke free areas, including all **hallways, laundry rooms, garden and underground garages.**

Smoke from your unit could travel to another unit. If your smoke interferes with another tenant's reasonable enjoyment of their unit, the landlord will take steps requiring you to stop smoking, including, but not limited to, seeking an order to terminate your tenancy.

Do not discard, flick or stomp out cigarette butts onto common property as this poses a fire risk and safety hazard to the property.

If you are interfering with [the landlord's] ability to lease units due to smoke emanating from your unit, we will have this matter brought before the Residential Tenancy Branch. Any associated costs to repair smoke damage in the units will be held at the Resident's cost.

*****Failure to comply with our smoking rules will result in your eviction*****

[emphasis original]

The landlord also entered a "breach letter" dated July 16, 2019 relating to the current rental unit wherein the landlord wrote:

Further to the warning letter sent to you by your building manager, it was reported by 3 different tenants on your floor surrounding your unit on July 3 and July 12th 2019 that you are smoking marijuana in your apartment.

This is a breach of a material term of your tenancy agreement that you signed with us:

Please refer to Section 10 of your addendum which states:

Smoking of any combustible material, including cigarettes & vapes and marijuana are NOT permitted in your suite, on your patio or in any common area.

It is affecting and interfering with the quality and quiet enjoyment of the living experience of other residents in the building. It is an odor nuisance.

Please accept this letter as a formal request that you stop smoking cigarettes or marijuana inside your suite immediately.

Further noncompliance will result in termination of your tenancy with no further warnings.

[emphasis original]

The landlord entered several letters from other occupants of the rental property, in which they wrote that they could smell marijuana in the hallway outside the rental unit. All but one of these letters was dated after the Notice was issued, but the BC and DT testified that these letters are only the most ones they have received, and that there have been regular complaints that the tenant was smoking marijuana in the rental unit.

In one of the letters, dated September 26, 2019, the occupant wrote that the smell of marijuana "hurts [her] breathing". In another letter, dated September 16, 2019, a different occupant writes that the smell "actually affected my asthma".

The landlord called an occupant of the rental property as a witness. He testified that he smells marijuana coming from the tenant's rental unit "every day" and that sometimes it can be smelled in the lobby. He testified that he knows it is coming from the tenant's rental unit as the smell is strongest by her door.

The landlord argued that the tenant was smoking marijuana in the rental unit, that this was significantly disturbing the other occupants of the rental property, and that this amounted to a breach of a material term of the tenancy.

The tenant denied that she smokes marijuana in the rental unit or on the common property. She admits that she does smoke marijuana, as does her husband (whom, she wrote in her application for dispute resolution, works in a legal marijuana grow op) but that they always leave the property to do so. She testified that her husband has cancer and treats it with marijuana.

The tenant did not dispute the allegations that the rental unit and areas outside it smell like marijuana, however. Instead, she testified that the other occupants were likely smelling residual marijuana on her or her husband's clothes.

She argued that, as she does not smoke marijuana in the rental unit, or on the common property, that she has not breached the tenancy agreement, and the Notice is invalid.

Tenant's Son

The landlord argued that the tenant's son lives with the tenant, in breach of the tenancy agreement. The landlord produced no documentary evidence of this, but its witness testified that he sees the tenant's son in the building "every day".

The tenant denied that her son lives with her. She testified that he comes to the rental unit most days to care for his ailing father. She entered a letter from her daughter into evidence wherein her daughter writes that the tenant's son lives with her.

Analysis

Section 47 of the Act states:

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,
 - (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;
- [...]
- (h) the tenant
 - (i) has failed to comply with a material term, and
 - (ii) has not corrected the situation within a reasonable time after the landlord gives written notice to do so;

These subsections are reflected on the landlord's selections of reasons to end the tenancy listed on the Notice.

Rule of Procedure 6.6 states

6.6 The standard of proof and onus of proof

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed.

The onus to prove their case is on the person making the claim. In most circumstances this is the person making the application. However, in some situations the arbitrator may determine the onus of proof is on the other party. For example, the landlord must prove the reason they wish to end the tenancy when the tenant applies to cancel a Notice to End Tenancy.

So, the landlord must prove it is more likely than not that the tenant's conduct satisfied any one of the conditions set out in section 47 of the Act. The landlord does not need to prove that all the reasons for ending the tenancy listed on the Notice are met for the Notice to be valid. It only needs to prove that one of them is met.

Unreasonable Disturbance?

The tenant testified that she did not smoke in the rental unit. She made extensive submissions regarding this assertion. She argued that there is no evidence to support the landlord's assertion that the tenant smoked in the rental unit.

I agree with the tenant's submission. None of the witness statements provided by the landlord state that the tenant was seen smoking marijuana or that smoke was seen emanating from the rental unit. Similarly, the landlord's witness did not testify that he saw the tenant smoke or saw smoke emanating from the rental unit.

Accordingly, I am not persuaded of the landlord's assertion that the tenant smoked marijuana (or indeed any other substance) inside the rental unit.

However, all of the witness statements as well as the landlord's witness stated that a strong odor of marijuana emanated from the rental unit. The landlord's witness testified that the odor could be smelled in the lobby of the rental property.

The landlord also alluded to the issue of the odor of marijuana in its correspondence with the tenant. In its letter of June 17, 2019, it wrote that the "it was recently report your unit [omitted] had a heavy smell of cigarette and marijuana smoke coming from it". In its letter of July 16, 2019, it characterized the smoking of marijuana in the rental unit as "an odor nuisance".

The tenant did not deny any of the allegations that a strong odor of marijuana came from the rental unit, and that it could be smelled in the lobby. Rather, she testified that it was likely a residual smell on her or her husband's clothes.

The tenant's arguments at the hearing seem to have been predicated on the assumption that if she could prove that she did not smoke in the rental unit, the Notice would be invalid. This approach is not correct.

The Notice states that the tenant unreasonably disturbed other occupants of the residential property. This unreasonable disturbance is not restricted to smoke. An odor can be an unreasonable disturbance.

I find that the tenant caused the odor of marijuana to emanate from the rental unit. I accept the landlord's witness' testimony that it could be smelled in the lobby of the residential property. I find that this offensive smell constitutes a "disturbance" under the Act.

I accept the evidence provided in two of the witness statements wherein one occupant wrote that the smell of marijuana "hurts [her] breathing" and another occupant wrote that the smell "actually affected my asthma".

Based on this and based on the fact that the odor could be detected in the lobby, I find the disturbance caused by the odor to be “unreasonable”. To have such an effect, the strength of the smell must necessarily be intense and beyond any level of what could be considered reasonable.

Accordingly, I find that the Notice was validly issued.

As I have already found that the landlord has satisfied the requirement of section 47(1)(d), I do not need to consider the other bases for issuing the Notice.

I dismiss the tenant’s application, without leave to reapply.

Order of Possession

Section 55 of the Act states:

Order of possession for the landlord

55 (1) If a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, the director must grant to the landlord an order of possession of the rental unit if

- (a) the landlord's notice to end tenancy complies with section 52 *[form and content of notice to end tenancy]*, and
- (b) the director, during the dispute resolution proceeding, dismisses the tenant's application or upholds the landlord's notice.

I find that the form of the Notice complies with section 52 of the Act.

As I have dismissed the tenant’s application, and I have found that the Notice complies with section 52 of the Act, I find that the landlord is entitled to an order of possession effective October 31, 2019 at 1:00 pm.

Conclusion

I dismiss the tenant’s application, without leave to reapply.

I order that the tenant deliver full and peaceable vacant possession and occupation of the rental unit to the landlord by October 31, 2019 at 1:00 pm. This order may be filed and enforced in the Supreme Court of British Columbia.

I order that the landlord serve a copy of this decision and accompanying order on the tenant in accordance with the Act immediately upon receipt.

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 16, 2019

Residential Tenancy Branch