



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

CNC FF

Introduction

This hearing was convened as a result of the Tenants' Application for Dispute Resolution. A hearing by telephone conference was held on October 22, 2019. The Tenants applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

- cancellation of the Landlord's 1 Month Notice to End Tenancy for Cause (the Notice) pursuant to section 47.

Both parties attended the hearing and provided testimony. All parties were provided the opportunity to present evidence orally and in written and documentary form, and to make submissions to me.

Neither the Landlord nor the Tenant raised any issues with respect to service of the Notice of Hearing. The Tenant confirmed receipt of the Landlords' evidence, but did not submit any evidence of their own.

I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issues(s) to be Decided

- Are the Tenants entitled to have the Notice cancelled?
 - If not, is the Landlord entitled to an Order of Possession?

Background and Evidence

The Tenants received the Notice on August 7, 2019. The Landlords issued the Notice for the following reasons:

- *Tenant or a person permitted on the property by the tenant has:*
 - *put the landlord's property at significant risk.*
- *Breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.*

Under the “Details of Cause” section on the Notice, the Landlord stated, that the Tenants have been smoking on the property, which is contrary to their tenancy agreement. The Landlords further indicated that the Tenants have also failed to get contents insurance for their rental unit, which is contrary to their tenancy agreement. The Landlords also listed a third cause, which is that the Landlords have given a key to their stepson, without their approval. The Landlords spoke to each of these issues, but re-iterated that it is the smoking issue that is their main concern.

Although the Landlords issued the Notice for several reasons, in this review, I will only address the facts and evidence which underpin my findings and will only summarize and speak to points which are essential in order to determine whether there are sufficient grounds to end the tenancy. In other words, my decision will focus on the evidence and testimony as it relates to the first ground (risk to property from smoking) identified by the Landlord, as this ground is what my decision hinges upon.

The Landlords pointed to the Tenancy Agreement to show that the Tenants promised they would not smoke on the property or in the rental unit. The Landlords stated that they noticed the Tenants smoking on the wooden deck, attached to the house, in late July and early August. The Landlords provided a series of photos taken between July 23, and August 4, 2019, as well as a video. The Landlords also presented a photo of an ashtray, along with what they state are ashes on the wooden deck. The Landlords stated that the Tenants were not just smoking on one occasion, and this was a repeated breach of the tenancy agreement, which put their property at significant risk. The Landlords stated that smoking, repeatedly, on a wooden deck attached to a house where two families reside is very dangerous, and is specifically what they were trying to avoid when they rented the house out.

The Tenants did not dispute that they relapsed as smokers. They stated that they only moved in during May of 2019, and after getting injured, they both relapsed smoking. The Tenants stated that it was not as frequent as the Landlords are stating but they do not refute that they breached their agreement, or that they were smoking on the deck.

The Tenants also spoke to the other issues, and do not dispute that their stepson is now staying with them, but they stated they have not cut him any keys, and he just uses one of their pre-existing keys. The Tenants just wanted to give him a place to stay because he is having a tough time finding other housing. The Tenants also stated that they are currently shopping around for contents insurance, and are saving up money to buy it.

Analysis

In the matter before me, the Landlord has the onus to prove that the reasons in the Notice are valid.

The Landlord has issued the Notice under multiple grounds. However, I first turn to the following grounds:

Tenant or a person permitted on the property by the tenant has:

- put the landlord's property at significant risk.

I note the Landlord has concerns about the Tenants' smoking and the risk this poses to the building, including to other occupants. The Tenants acknowledge smoking, contrary to their tenancy agreement. The Tenants do not dispute that they smoked, on multiple occasions, on the wooden deck, which is attached to the main house. The Tenants stated that they no longer smoke, as of mid-August 2019, and plan on keeping it this way.

I acknowledge that the Tenants state they no longer smoke as of mid-August. However, in determining whether or not the Landlords have sufficiently demonstrated that they have cause to end the tenancy, I must also look at what occurred leading up to the issuance of the Notice, on August 7, 2019.

The undisputed evidence is that the Tenants were smoking, contrary to their tenancy agreement. There is photographic evidence, and video evidence showing the location of the Tenants' smoking area. I note it is right next to the house, on a wooden deck. I further, note that the Tenants smoked, on multiple occasions, over several weeks, and it was not an isolated incident. Given the location of the smoking area, and that the deck is a wooden structure (combustible) attached to the house, where at least two families reside, I find the Tenants repeatedly placed the Landlords' property at risk by smoking in the manner they did. The Tenants were aware they were not supposed to smoke on the deck, but did so anyways.

Based on these reasons, I find the Landlords have sufficient grounds to issue the Notice.

Having made this finding, it is not necessary to consider the remaining grounds indicated on the Notice. The Tenant's application to cancel the Notice is dismissed. The tenancy is ending.

Under section 55 of the *Act*, when a Tenant's application to cancel a Notice to end tenancy is dismissed and I am satisfied that the Notice to end tenancy complies with the requirements under section 52 regarding form and content, I must grant the Landlord an order of possession.

I find that the Notice complies with the requirements of form and content. The Landlord is entitled to an order of possession for the end of October 2019, given rent has already been paid up until this point.

Conclusion

The Tenants' application to cancel the 1-Month Notice to End Tenancy for Cause is dismissed.

The Landlord is granted an order of possession effective **October 31, 2019, at 1pm**, after service on the Tenants. This order must be served on the Tenants. If the Tenants fail to comply with this order the Landlord may file the order with the Supreme Court of British Columbia and be 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: October 22, 2019

Residential Tenancy Branch