



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding RILKA INVESTMENTS
LTD and [tenant name suppressed to protect
privacy]

DECISION

Dispute Codes CNC, OLC, LRE, FFT

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;
- an order requiring the landlord to comply with the *Act*, regulation or tenancy agreement pursuant to section 62;
- an order to suspend or set conditions on the landlord's right to enter the rental unit pursuant to section 70; and
- authorization to recover his filing fee for this application from the landlord pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another. The parties acknowledged receipt of evidence submitted by the other. I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure; however, I refer to only the relevant facts and issues in this decision.

Issue(s) to be Decided

Should the One Month Notice to End Tenancy be cancelled? If not, is the landlord entitled to an order of possession?

Is the tenant entitled to an order compelling the landlord to comply with the *Act*, regulation or tenancy agreement?

Is the tenant entitled to an order that suspends or limits the landlords right to enter the rental unit?

Is the tenant entitled to the recovery of the filing fee for this application from the landlord?

Background and Evidence

The landlords gave the following testimony. RR testified that the tenancy began on August 1, 2019 with the monthly rent of \$1575.00 due on the first of each month. RR testified that as part of their tenancy agreement with the tenants, they must not smoke within 7.5 meters of “any window, door, or intakes”. RR testified that on January 30, 2020 the tenant and his friends were observed to have been smoking within 7.5 meters of a window. LR testified that she smelt the smoke and saw the three individuals smoking and on the following day a warning letter was given to the tenants. RR testified that on February 13, 2020 the tenant was observed smoking once again within 7.5 meters of a window for which a one month notice to end tenancy was issued two days later. The landlord has issued the notice for the following reason:

“Breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.”

RR requests an order of possession.

The tenant gave the following testimony. The tenant testified that she does agree that they were smoking on one of the occasions but that it was 9 meters away from any window, door, or intake. The tenant testified that her husband was at work on February 13, 2020 and that the landlord is mistaken. The tenant testified that the landlords are smokers themselves, so she isn't sure as to why they are pursuing this matter. The tenant testified that she is actively looking to move and will do so when she finds a place that will allow her to park her food truck. The tenant testified that the landlord hasn't provided enough evidence to show that smoking occurred within 7.5 meters of any door, window, or intake and therefore she should be able to continue to live in the unit.

Analysis

When a landlord issues a notice under Section 47 of the Act they bear the responsibility in providing sufficient evidence to support the issuance of that notice. In the matter before me the parties dispute the distance from doorway, window or air exchange that the tenants were found to be smoking. The landlord testified and provided an addendum to the tenancy agreement that states smoking must be at least 7.5 meters away from

doorway, window or air exchange. The tenant testified that they smoked at least 9 meters away from these items. As noted above, the landlord bears the responsibility to provide enough evidence to satisfy the Arbitrator to be granted an order of possession. In this case, I find that the landlord has not sufficiently or adequately shown that the tenants were smoking within 7.5 meters of a doorway, window or air exchange. Based on the insufficient evidence before me I hereby dismiss the One Month Notice to End Tenancy for Cause dated February 15, 2020; it is of no effect or force. The tenancy continues.

I find it timely to put the tenants on notice that, if these alleged behaviours were to occur in the future and another notice to end tenancy issued, the record of these events would form part of the landlord's case should it again come before an Arbitrator, for consideration.

As part of the tenant's application they sought an order to have the landlord comply with the Act, regulation or tenancy agreement and an order to suspend or limit the landlords right to enter the unit. The tenants were silent on these two issues despite being given full opportunity to present their application, accordingly; I dismiss this portion of their application. As the tenant was only partially successful in their application, they must bear the cost of the filing fee.

Conclusion

The One Month Notice to End Tenancy for Cause is set aside. The tenancy continues.

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 16, 2020

Residential Tenancy Branch