



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC

Introduction

This hearing dealt with an Application for Dispute Resolution by the Tenant filed under the *Residential Tenancy Act*, (the “*Act*”), to cancel One Month Notice to End Tenancy for Cause, (the “*Notice*”) issued on June 30, 2020. The matter was set for a conference call.

The Landlords, the Tenant and the Tenants Advocate (the “Tenant”) attended the hearing and were each affirmed to be truthful in their testimony. The Landlords also provided two witnesses to support their claim; both witnesses were affirmed to be truthful in their testimony. The Landlords and Tenant were each provided with the opportunity to present their evidence orally and in written and documentary form and to make submissions at the hearing.

In a case where a tenant has applied to cancel a Notice, Rule 7.18 of the Residential Tenancy Branch Rules of Procedure requires the landlord to provide their evidence submission first, as the landlord has the burden of proving cause sufficient to terminate the tenancy for the reasons given on the Notice.

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 to be Decided

- Should the Notice issued on June 30, 2020, be cancelled pursuant to section 47 of the *Act*?
- If not, is the Landlord entitled to an order of possession pursuant to section 55 of the *Act*?

Background and Evidence

While I have turned my mind to all of the accepted documentary evidence and the testimony of the parties, only the details of the respective submissions and/or arguments relevant to the issues and findings in this matter are reproduced here.

The tenancy agreement shows that this tenancy began on August 15, 2017, as a month to month tenancy. Rent in the amount of \$650.00 is to be paid by the first day of each month, and the Tenant paid a \$325.00 security deposit and a \$325.00 pet damage deposit. The Tenant submitted a copy of the tenancy agreement and attached addendum into documentary evidence.

The testimony of the Landlord was that the Notice to end tenancy was posted to the front door of the rental unit on June 30, 2020. The reason for the Notice was checked off as follows:

- *Tenant or a person permitted on the property by the tenant has:*
 - *Seriously interfered with or unreasonably disturbed another occupant or the landlord.*
 - *Seriously jeopardized the health or safety or lawful right of another occupant or the landlord.*

The Notice states the Tenant must move out of the rental unit by August 1, 2020. The Notice informed the Tenant of the right to dispute the Notice within 10 days after receiving it. The Notice also informed the Tenant that if an application to dispute the Notice is not filed within 10 days, the Tenant is presumed to accept the Notice and must move out of the rental unit on the date set out on page one of the Notice. The Tenant submitted a copy of the Notice into documentary evidence.

The Landlord testified that the Tenant has been smoking marijuana on the rental property, in the rental unit and on their balcony. The Landlord testified that it is a material term of the tenancy that there was no marijuana allowed on the property.

The Landlord testified that they have received several complaints from the other occupants of the building regarding the strong smell of marijuana coming from the Tenant's rental unit and present in the hallways of the rental property. The Landlord provided two witness statements into documentary evidence.

Witness #1 testified that they had been sitting on their balcony, with their son, on May 20, 2020, when they were confronted with marijuana smoke, and had to return indoors

to get away from the smoke and the smell. Witness #1 testified that the smoke came from the direction of the Tenant's rental unit but confirmed that they had not seen the Tenant smoking.

Witness #2 testified that their son has health issues that could be adversely affected by marijuana smoke.

The Landlords testified that they had spoken to the Tenant about not smoking marijuana on the property. The Landlords also testified that they had given a written warning to the Tenant on May 20, 2020, regarding the ban on the use of marijuana on the property contained in the tenancy agreement.

The Tenant testified that they have never smoked marijuana in their rental unit, on their balcony or anywhere on the rental property. The Tenant testified that they did consume edible marijuana products, but that they had disclosed that fact to the Landlords before they moved in and had been advised that edibles were fine to use on the property. The Tenant testified that they do smoke marijuana, but only off the property, in an alleyway that is not part of the rental property.

The Tenant also testified that they had, once, cooked with marijuana but that they have not done that again since receiving the Landlords' written warning on May 20, 2020.

The Tenant testified that there are several other occupants of the rental property that use marijuana as well and that they may be causing the smell of marijuana in the building.

The Landlord agreed that there are other people in the building that use marijuana, but that they all smoke off the property.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

I find that the Tenant was deemed to have received the Notice to end tenancy, three days after it was posted to the door of the rental unit, on July 2, 2020. Section 47 of the *Act* requires that upon receipt of a Notice to End Tenancy for Cause, a tenant must, within 10 days, dispute the notice by filing an Application for Dispute Resolution with the

Residential Tenancy Branch. If the tenant does not do either of these things, the tenant is conclusively presumed to have accepted the Notice.

Accordingly, the Tenant had until July 12, 2020, to file their application to dispute the Notice. I have reviewed the Tenant's application, and I find that the Tenant filed their application on July 7, 2020, within the statutory time limit.

In this case, the Landlord's have claimed that the Tenant is smoking marijuana on the rental property, in breach of their tenancy agreement and that this action has seriously interfered and unreasonably disturbed another occupant of the rental property, and seriously jeopardized the health or safety of another occupant of the rental property.

I have reviewed the tenancy agreement, and I find that it is a material term of this tenancy that the smoking of marijuana is not permitted anywhere on the rental property.

During the hearing, I heard contradictory testimony from both these parties regarding if the Tenant is smoking marijuana on the property. and how it was affecting the Landlord and her daughter. In cases where two parties to a dispute provide equally plausible accounts of events or circumstances related to a dispute, the party making a claim has the burden to provide sufficient evidence over and above their testimony to establish their claim.

After careful review of the Landlord's evidence, I find that the Landlord has not provided sufficient documentary evidence, to satisfy me, that the Tenant has smoked marijuana on the rental property. I find there is an absence of physical evidence that would outweigh the contradictory verbal testimony of the parties, in this case.

Therefore, I find that the Landlord has not provided sufficient evidence to show that the Tenant had this tenancy should end on either of the points indicated on the Landlords' Notice.

I find the Notice was of no effect under the *Act*, and I grant the Tenants' application to cancel the Notice issued June 30, 2020.

Conclusion

I grant the Tenant's application, and I find the Notice dated June 30, 2020, of no effect under the *Act*. The tenancy will continue until legally 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: August 10, 2020

Residential Tenancy Branch