



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding CRAFT PROPERTIES LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC, 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;
- authorization to recover his filing fee for this application from the landlord pursuant to section 72.

Both parties attended the hearing via conference call and provided affirmed testimony. Both parties confirmed the tenant served the landlord with the notice of hearing package and the submitted documentary evidence via Canada Post Registered Mail on August 14, 2020. Both parties also confirmed the landlord served the tenant with the submitted documentary evidence by posting it to the rental unit door on September 7, 2020. Neither party raised any service issues. I accept the undisputed affirmed evidence of both parties and find that both parties have been properly served as per sections 88 and 89 of the Act.

Issue(s) to be Decided

Is the tenant entitled to an order cancelling the 1 month notice?
Is the tenant entitled to recovery of the filing fee?

Background and Evidence

While I have turned my mind to all the documentary evidence, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of the applicant's claim and my findings are set out below.

This tenancy began on August 1, 2013 on a fixed term tenancy until July 31, 2014 and then thereafter on another fixed term or month to month basis as per the submitted copy of the signed tenancy agreement dated July 8, 2013. The monthly rent was \$750.00 payable on the 1st day of each month.

Both parties confirmed that on July 28, 2020, the landlord served the tenant with the 1 Month Notice posted to the rental unit door on July 28, 2020. The 1 Month Notice sets out an effective end of tenancy date of August 31, 2020 and that it was being given as:

- the tenant or person permitted on the property by the tenant has:
 - significantly 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 tenant has engaged in illegal activity that has, or is likely to:
 - damage the landlord's property;
 - adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant or the landlord.
- Breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.
- the tenant has assigned or sublet the rental unit/site without the landlord's written consent.

The details of cause states:

Since tenant, S.S. moved in 2013 he smoke marijuana inside the unit, on his balcony, in our property many times even he signed "residential tenancy agreement addendum" not smoking marijuana.

His girl friend S.M. sneaked in this unit in July 2013 and he said hse is the lady who clean his unit. She knocked tenant #507's door and asked for sleepover because tenant kicked her out on June 20, 2014.

Feb 2019 tenant gave me notice to move out, but very soon he revoked his notice, bug we informed him that we don't accept his request.

Feb 5, 2020 tenant's wife leaked garbage dirty water on hallway carpet didn't do anything. Refused to pay the shampoo the carpet fee.

Tenant plants 6 big pots of marijuana on his balcony. July 14 when I showed unit #508 the odour bother the prospective tenants and me I showed this unit 8 times and none is interested.

[reproduced as written]

During the hearing the landlord clarified that the tenant has not engaged in any illegal activity. The landlord stated that these two reason for cause were selected in error and as such wish to cancel them. On this basis, the landlord's notice shall proceed on the remaining 4 reasons for cause.

The landlord stated that a Breach of a material term of the tenancy was not corrected after written notice to do so. The landlord clarified that the tenant was found to be smoking marijuana on the rental premises which is a contravention of the signed addendum to the tenancy agreement. The tenant confirmed in his direct testimony that he does smoke marijuana on the rental property.

The landlord referred to the "Residential Tenancy Agreement Addendum" signed on July 8, 2020 by both the named tenant and the landlord's agent, L.P.Y. which states in part,

*In consideration of the execution or renewal of a Residential Agreement of the residential property identified in the Residential Tenancy Agreement, **Landlord and Resident agree as follows:***

Resident(s) , any member of the resident(s) household, and any persons affiliated with the resident or invited onto the residential property or residential premise by the resident(s) or any member of the resident's family shall not engage in any criminal activity on the premises or property including, but not limited to:

- a) any drug related criminal activity (**including smoking marijuana**)*
- b) solicitation (sex trade workers and related nuisance activity)*
- c) street gang activity*
- d) assault or threatened assault*
- e) unlawful use of a firearm*
- f) any criminal activity that threatens the health, safety or welfare of the landlord, other residents or persons on the residential property or residential premises.*

VIOLATION OF THE ABOVE PROVISIONS, WHICH IS A REASONABLE AND AGREEDUPON TERM OF THE TENANCY AGREEMENT, SHALL BE GOOD CAUSE FOR A NOTICE TO END A TENANCY.

A single violation of any of the provisions of this added addendum shall be deemed a serious violation and material non-compliance with the Residential Tenancy Agreement. It is understood and agreed that a single violation shall be good cause for a notice to end a Residential Tenancy Agreement. Unless otherwise provided by law, proof of violation shall not require criminal conviction, but shall be predominant of the evidence.
[reproduced as written with emphasis]

The tenant disputed the landlord's claim arguing that the above noted addendum was not initialled by the tenant. However, the tenant did confirm that he did sign the addendum on July 8, 2013 and that he did understand the contents.

The landlord provided undisputed affirmed testimony that the tenant was notified that complaints have been received from other tenants that the tenant is smoking marijuana. The landlord stated that the tenant must stop smoking marijuana on the rental property or that his tenancy could end. The tenant confirmed that the landlord notified him of complaints made by other tenants over his smoking marijuana on the rental property, however, the tenant argues that a verbal agreement was made with the landlord, L.P.Y. in which the above noted addendum was mutually cancelled. The landlord disputed this claim stating at no time was such an agreement made. The tenant also stated that he had proof of the verbal agreement as a witness, G.M. was present. The tenant's witness, G.M. stated that he was never present during any discussions between the tenant and the landlords concerning the cancelling of the "Residential Tenancy Agreement Addendum". The tenant's witness stated that he was only present when the tenant provided a copy of his permit to use medical cannabis.

The tenant repeatedly stated that a letter was sent to the landlord in 2016 referring to the tenant smoking. The tenant provided the landlord with a copy of a permit for medical cannabis use. The tenant stated that this is proof the landlord agreed to mutually cancel the Addendum condition to not smoke marijuana on the rental property.

The landlord also stated that the complaints received from other tenants that the tenant is smoking marijuana is proof that the tenant is disturbing other tenants of the rental property by significantly interfering with or unreasonably disturbing another occupant.

Analysis

In an application to cancel a 1 Month Notice, the landlord has the onus of proving on a balance of probabilities that at least one of the reasons set out in the notice is met.

I accept the undisputed affirmed evidence of both parties and find that the landlord did serve the tenant with the notice to end tenancy dated July 28, 2020 by posting it to the rental unit door on July 28, 2020. Both parties confirmed the contents of the notice.

I accept the undisputed affirmed evidence of both parties and find on a balance of probabilities that the landlord's notice is valid. The landlord provided undisputed evidence that she notified the tenant of complaints over the tenant smoking marijuana on the rental property and that the tenants tenancy was in jeopardy if he did not stop. Both parties confirmed that the tenant signed the addendum agreeing to not smoke marijuana on July 8, 2013 and that he was aware of the conditions and understood them. The tenant confirmed in his direct testimony that he is smoking marijuana on the rental property. On this basis, I find that the tenant's application to cancel the notice is dismissed. The 1 month notice dated July 28, 2020 is upheld.

The landlord is granted an order of possession pursuant to section 55 of the Act and as the effective end of tenancy date has passed, an order of possession is issued and will be effective 2 days after it is served upon the tenant.

Conclusion

The landlord is granted an order of possession.

The tenant must be served with the order of possession. Should the tenant fail to comply with the order, the order may be filed in the Supreme Court of British Columbia and 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: September 17, 2020

Residential Tenancy Branch