



Dispute Resolution Services

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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 August 17, 2020. The matter was set for a conference call.

Both the Landlord and Tenant attended the hearing and were each affirmed to be truthful in their testimony. They were both 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 is described in this Decision.

Issues to be Decided

- Should the Notice issued on August 17, 2020, be cancelled?
- If not, is the Landlord entitled to an order of possession?

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 the tenancy began on July 4, 2019, as a month-to-month tenancy. Rent in the amount of \$710.00 is to be paid by the first day of each month, and the Tenant paid the Landlord a \$325.00 security deposit at the outset of the tenancy. The Landlord submitted a copy of the tenancy agreement into documentary evidence.

The Landlord testified that they issued the Notice on August 17, 2020. The reasons checked off by the Landlord within the Notice are as follows:

- *Tenant or a person permitted on the property by the tenant has:*
 - *Significantly interfered with or unreasonably disturbed 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 Notice states the Tenant must move out of the rental unit by September 30, 2020. The Notice informed the Tenant of the right to dispute the Notice within 10 days after receiving it. The Tenant confirmed receiving the Notice on August 17, 2020, and that they applied to dispute the Notice on August 24, 2020.

The Landlord testified that the tenancy agreement stated that there was no smoking in the rental unit and that renters were only allowed to smoke in designated areas on the rental property.

The Landlord testified that in August, September and October 2019, they had received several complaints regarding the Tenant smoking in their rental unit and in other non – designated smoking areas, as well as several noise complaints that the Tenant was having loud gatherings in their rental unit until the early hours of the morning.

The Landlord testified that they issued the Tenant two warning and conduct letters, on September 5, 2019, and October 28, 2019, regarding the Tenant's breach of the smoking and noise terms of the tenancy agreement. The Landlord submitted copies of the warning letters into documentary evidence.

The Landlord testified that they continued to receive complaints regarding the Tenant smoking in non-designated areas and noise complaints, so they issued a final written warning to the Tenant on May 12, 2020. The Landlord submitted a copy of the final written warning into documentary evidence.

The Landlord testified that they received five more smoking and noise complaints between August 6, 2020, to August 15, 2020. The Landlord testified that the decision was made to end the Tenant's tenancy due to the continual breaches of the non-smoking terms of the tenancy and for the noise complaints. The Landlord submitted a copy of the Notice to end tenancy into documentary evidence.

The Tenant testified that that had smoked in the rental unit a couple of times and that they did not think the noise was a big deal.

Analysis

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

I have reviewed the tenancy agreement, and I find that it is a material term of the tenancy that the rental unit is a non-smoking unit and that smoking is only permitted in a designated smoking area on the rental property.

I accept the sworn testimony of the Landlord that they had received numerous complaints from other occupants about the Tenant smoking in their rental unit and other non-designated areas on the rental property.

I also accept the sworn testimony from both parties that the Landlord had served the Tenant with three written warnings regarding this breach of their tenancy agreement.

Finally, I accept the sworn testimony of the Tenant that they had smoked in their rental unit a couple of times.

I find that the Tenant has breached a material term of their tenancy by smoking or permitting others to smoke inside the rental unit.

Therefore, I dismiss the Tenant's application to cancel the Notice issued on August 17, 2020, and I find the Notice is valid and enforceable.

Under section 55 of the Act, if the tenant's application is dismissed and the Notice complies with Section 52, I am required to grant the landlord an order of possession to the rental unit. Therefore, I find that the Landlord is entitled to an order of possession, effective not later than 2 days after service of this Order.

Conclusion

I dismiss the Tenant's application to cancel the Notice issued on August 17, 2020.

I grant the Landlord an **Order of Possession** effective not later than **2 days** after service of this Order. The Landlord is provided with this Order in the above terms, and the Tenant must be served with this Order as soon as possible. Should the Tenant fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court 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: October 6, 2020