



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC

Introduction

This hearing was convened by way of conference call concerning an application made by the tenant seeking an order cancelling a notice to end the tenancy for cause.

The tenant and the landlord attended the hearing and the tenant was assisted by an Advocate. The landlord gave affirmed testimony, and the tenant and Advocate were given the opportunity to question the landlord, and both parties gave submissions. No issues with respect to service or delivery of documents or evidence were raised, and all evidence provided has been reviewed and is considered in this Decision.

Issue(s) to be Decided

Has the landlord established that the One Month Notice to End Tenancy for Cause was given in accordance with the *Residential Tenancy Act*?

Background and Evidence

The landlord testified that this fixed-term tenancy began on May 1, 2016 and reverted to a month-to-month tenancy after May 1, 2017, and the tenant still resides in the rental unit. Rent in the amount of \$640.00 was payable on the 1st day of each month, which has been raised from time-to-time and is currently \$702.00 per month. There are no rental arrears. At the outset of the tenancy, the landlord at the time collected a security deposit from the tenant in the amount of \$320.00, which was transferred to the landlord at the time of purchasing the building, which is still held in trust by the landlord, and no pet damage deposit was collected. The rental unit is a suite within a 4-plex, and a copy of the tenancy agreement has been provided as evidence by the tenant.

The landlord further testified that on October 19, 2020 he personally served the tenant with a One Month Notice to End Tenancy for Cause, and a copy has been provided by

the tenant for this hearing. It is dated October 19, 2020 and contains an effective date of vacancy of November 30, 2020. The reasons for issuing it state:

- Tenant or a 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;
- Tenant or a person permitted on the property by 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;
 - jeopardize a lawful right or interest of another occupant or the landlord.

The landlord testified that he has received verbal complaints and a written complaint of second-hand smoke, interfering with the reasonable quiet enjoyment of other tenants to enjoy their home space. The landlord has also received complaints of the tenant possibly smoking inside the rental unit, which would be a breach of the agreement, albeit not in writing; the previous owners didn't include it in the tenancy agreement. However, the right of other tenants to quiet enjoyment within communal spaces and being inside the unit and near entrances would be a breach of Section 21.1 of the *Residential Tenancy Act*.

The landlord simply wants buffer zones of 6 meters around the building. The landlord has asked that any smoking within the building cease, and affects the landlord's insurance.

The tenant's Advocate submits that the tenancy agreement was signed by a landlord and by the tenant before the current landlord bought the building. There is no prohibition of smoking in the tenancy agreement, and no written warning was given to the tenant, other than a notice given to all tenants. A copy has been provided by the tenant for this hearing. There is no breach of the tenancy agreement.

The landlord submitted that he did not hand the notice to everyone, just the 2 smokers in the complex.

Analysis

Where a tenant disputes a notice to end a tenancy given by the landlord, the onus is on the landlord to establish that it was given in accordance with the *Residential Tenancy Act*, which can include the reason(s) for issuing it.

I have reviewed the tenancy agreement, which contains no prohibitions with respect to smoking. The landlord raised Section 21.1 of the *Residential Tenancy Act*, which states:

- (2) If a tenancy agreement entered into before the cannabis control date
 - (a) includes a term that prohibits or limits smoking tobacco, and
 - (b) does not include a term that expressly permits smoking cannabis,
- the tenancy agreement is deemed to include a term that prohibits or limits smoking cannabis in the same manner as smoking tobacco is prohibited or limited.

In other words, if the tenancy agreement specifies that smoking is not permitted, that prohibition applies to smoking cannabis. In this case, the tenancy agreement does not prohibit smoking.

I find that the landlord has failed to establish that the tenant or a person permitted on the property by the tenant has engaged in any illegal activity, or any breach of the tenancy agreement, and I cancel the notice to end the tenancy.

Conclusion

For the reasons set out above, the One Month Notice to End Tenancy for Cause dated October 19, 2020 is hereby cancelled and 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: December 04, 2020

Residential Tenancy Branch