



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding PEACHLAND SENIOR CITIZEN HOUSING
SOCIETY and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC

Introduction

On November 25, 2020, the Tenants applied for a Dispute Resolution proceeding seeking to cancel a One Month Notice to End Tenancy for Cause (the “Notice”) pursuant to Section 47 of the *Residential Tenancy Act* (the “Act”).

Tenant R.A. attended the hearing. V.F. and T.S. attended the hearing as agents for the Landlord. All in attendance provided a solemn affirmation.

The Tenant advised that the Landlord was served with the Notice of Hearing package by registered mail on or around December 4, 2020 and V.F. confirmed that the Landlord received this package in early December. Based on this undisputed testimony, and in accordance with Sections 89 and 90 of the *Act*, I am satisfied that the Landlord has been served with the Notice of Hearing package.

He also stated that he did not serve any evidence for consideration on this file.

V.F. advised that the Landlord’s evidence was served to the Tenants by hand on February 1, 2021 and the Tenant confirmed that this evidence was received. As service of this evidence complied with Rule 3.15 of the Rules of Procedure, I am satisfied that the Landlord’s evidence has been satisfactorily served on the Tenants. As such, this evidence was accepted and considered when rendering this Decision.

All parties were given an opportunity to be heard, to present sworn testimony, and to make submissions. I have reviewed all oral and written submissions before me; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

I note that Section 55 of the *Act* requires that when a Tenant submits an Application for Dispute Resolution seeking to cancel a notice to end tenancy issued by a Landlord, I must consider if the Landlord is entitled to an Order of Possession if the Application is dismissed and the Landlord has issued a notice to end tenancy that is compliant with the *Act*.

Issue(s) to be Decided

- Are the Tenants entitled to have the Notice cancelled?
- If the Tenants are unsuccessful in cancelling the Notice, is the Landlord entitled to an Order of Possession?

Background and Evidence

While I have turned my mind to the accepted documentary evidence and the testimony of the parties, not all details of the respective submissions and/or arguments are reproduced here.

All parties agreed that the tenancy started on July 1, 2018, that rent was currently established at \$600.00 per month, and that it was due on the first day of each month. There was a dispute over whether or not a security deposit of \$300.00 was paid to the Landlord. A copy of the tenancy agreement was submitted as documentary evidence. All parties also agreed that the Tenant was a co-tenant on the tenancy agreement. As such, the other co-tenant was added as an Applicant on the Style of Cause of this Decision.

All parties agreed that the Notice was served to the Tenants by hand on November 17, 2020. The reasons the Landlord served the Notice are because the “Tenant or a person permitted on the property by the tenant has: seriously jeopardized the health or safety or lawful right of another occupant or the landlord, and/or put the landlord’s property at significant risk.” and because of a “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 indicated that the effective end date of the tenancy was December 31, 2020.

V.F. advised that there is a material term in the tenancy agreement prohibiting smoking of any substance in the rental unit or on the property. However, there has been a long period of contravention of this term. The Tenants were warned multiple times verbally

and in writing to quit smoking, but the Tenants did not comply. A breach letter was served to the Tenants on September 15, 2020, reminding them of the material term in the tenancy agreement prohibiting smoking, and warning them to stop immediately. This warning letter was submitted as documentary evidence. One or both of the Tenants continued to smoke in the rental unit after this letter was served.

The Tenant confirmed that they received these verbal and written warnings, that they were aware of the material term, and that his co-tenant continued to smoke despite these warnings. He advised that he was not able to prevent his co-tenant from smoking.

Analysis

Upon consideration of the evidence before me, I have provided an outline of the following Sections of the *Act* that are applicable to this situation. My reasons for making this Decision are below.

In considering this matter, I have reviewed the Landlord's Notice to ensure that the Landlord has complied with the requirements as to the form and content of Section 52 of the *Act*. In reviewing this Notice, I am satisfied that the Notice meets all of the requirements of Section 52 and I find that it is a valid Notice.

I find it important to note that a Landlord may end a tenancy for cause pursuant to Section 47 of the *Act* if any of the reasons cited in the Notice are valid. Section 47 of the *Act* reads in part as follows:

Landlord's notice: cause

47 (1) A landlord may end a tenancy by giving notice to end the tenancy if one or more of the following applies:

(d) the tenant or a person permitted on the residential property by the tenant has

(ii) seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant, or

(iii) put the landlord's property at significant risk;

(h) the tenant

(i) has failed to comply with a material term, and

(ii) has not corrected the situation within a reasonable time after the landlord gives written notice to do so;

Furthermore, Policy Guideline # 8 outlines a material term as follows:

A material term is a term that the parties both agree is so important that the most trivial breach of that term gives the other party the right to end the agreement.

To determine the materiality of a term during a dispute resolution hearing, the Residential Tenancy Branch will focus upon the importance of the term in the overall scheme of the tenancy agreement, as opposed to the consequences of the breach. It falls to the person relying on the term to present evidence and argument supporting the proposition that the term was a material term.

The question of whether or not a term is material is determined by the facts and circumstances surrounding the creation of the tenancy agreement in question. It is possible that the same term may be material in one agreement and not material in another. Simply because the parties have put in the agreement that one or more terms are material is not decisive. During a dispute resolution proceeding, the Residential Tenancy Branch will look at the true intention of the parties in determining whether or not the clause is material.

As well, this policy guideline states that “To end a tenancy agreement for breach of a material term the party alleging a breach – whether landlord or tenant – must inform the other party in writing:

- that there is a problem;
- that they believe the problem is a breach of a material term of the tenancy agreement;
- that the problem must be fixed by a deadline included in the letter, and that the deadline be reasonable; and
- that if the problem is not fixed by the deadline, the party will end the tenancy.”

With respect to the reason on the Notice of a breach of a material term, I find it important to note that the policy guideline states that “it is possible that the same term may be material in one agreement and not material in another.” I find that this means that determining what would be considered a material term is based on the fact pattern of each specific scenario and that it is up to the Arbitrator in each case to evaluate the evidence presented and make a determination on this matter.

From the tenancy agreement, I am satisfied that there is a term which states that “All units and property are designated NON-SMOKING. You must be a non-smoker to qualify for accommodations. If you are found to be smoking on the property it will be considered a contravention of the tenancy agreement and grounds for eviction.” Furthermore, the consistent and undisputed evidence is that the Landlord provided a warning letter on September 15, 2020 reminding the Tenants of this material term and advising that smoking must cease immediately. In addition, the Tenant acknowledged that despite receiving this breach letter, the co-tenant continued to smoke in the rental unit.

When reviewing the totality of the evidence before me, I am satisfied that there is a no smoking term in the tenancy agreement that would be considered a material term necessary to protect the safety of the rental unit and the other occupants in the building. As well, I am also satisfied that despite the Landlord serving the Tenants with a warning letter advising that there was a problem, that the problem must be fixed by a deadline included in the letter, and if the problem is not fixed by the deadline, the Landlord will end the tenancy, one or both Tenants continued to smoke in the rental unit.

Ultimately, I find that the undisputed testimony is sufficient evidence to justify service of the Notice under the reason of a breach of a material term. As such, I dismiss the Tenants’ Application.

Pursuant to Section 55 of the *Act*, I find that the Landlord is entitled to an Order of Possession that takes effect on **February 28, 2021 at 1:00 PM** after service of this Order on the Tenants. The Landlord will be given a formal Order of Possession which must be served on the Tenants. If the Tenants do not vacate the rental unit after service of the Order, the Landlord may enforce this Order in the Supreme Court of British Columbia.

Conclusion

The Tenant’s Application is dismissed without leave to reapply and the Landlord is provided with a formal copy of an Order of Possession effective on **February 28, 2021 at 1:00 PM** after service on the Tenants. Should the Tenants or any occupant on the premises fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

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: February 18, 2021

Residential Tenancy Branch