



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

CNC, OLC, FFT

Introduction

This hearing was convened in response to the Tenant's Application for Dispute Resolution, in which the Tenant applied to set aside a One Month Notice to End Tenancy for Cause, for an Order requiring the Landlord to comply with the *Residential Tenancy Act (Act)* and/or the tenancy agreement, and to recover the fee for filing this Application for Dispute Resolution.

The Landlord stated that she received the Dispute Resolution Package in the mail sometime in November of 2020.

This hearing commenced at the scheduled start time of 11:00 a.m. By the time the teleconference was terminated at 11:27 a.m., the Tenant had not appeared. As the Landlord was properly served with notice of these proceedings, the hearing proceeded in the absence of the Tenant, who is the Applicant.

Residential Tenancy Branch records show that the Tenant submitted evidence to the Residential Tenancy Branch in November and December of 2020. As the Tenant did not attend the hearing to present this evidence or to establish that it was served to the Landlord, this evidence was not considered as evidence for these proceedings.

On January 24, 2021 the Landlord submitted evidence to the Residential Tenancy Branch. The Landlord stated that this evidence was posted on the Tenant's door on January 22, 2021. In the absence of evidence to the contrary, I find that this evidence was served to the Tenant in accordance with section 88 of the *Act*, and it was accepted as evidence for these proceedings.

Residential Tenancy Branch records show that the Landlord submitted evidence to the Residential Tenancy Branch on November 19, 2020. The Landlord stated that she did not submit evidence to the Residential Tenancy Branch prior to January 24, 2021 and that she did not serve any evidence to the Tenant prior to January 22, 2021. As there is no evidence that the documents submitted to the Residential Tenancy Branch on November 19, 2020 were served to either party, these documents were not accepted as evidence for these proceedings.

The Landlord was given the opportunity to present relevant oral evidence and to make relevant submissions. She affirmed that she would speak the truth, the whole truth, and nothing but the truth during these proceedings.

Issue(s) to be Decided

Should the Notice to End Tenancy for Cause, served pursuant to section 47 of the *Residential Tenancy Act (Act)*, be set aside?

Background and Evidence

The Landlord stated that this tenancy began on April 01, 2020 and that the Tenant is still living in the rental unit.

The Landlord stated that a One Month Notice to End Tenancy for Cause was personally served to the Tenant, which declared that the rental unit must be vacated by December 31, 2020.

The reasons cited for ending the tenancy on the One Month Notice to End Tenancy for Cause are:

- the Tenant has allowed an unreasonable number of occupants in the unit;
- the Tenant or a person permitted on the property by the Tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord;
- 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
- the Tenant has breached a material term of the tenancy that has not been corrected within a reasonable time of receiving written notice to do so.

In the "Details of Cause" section of the One Month Notice to End Tenancy for Cause,

the Landlord explains that the tenancy is ending because the Tenant has breached a material term of the tenancy agreement by smoking cannabis in the rental unit.

The Landlord attached six pages to the One Month Notice to End Tenancy for Cause, in which she declares:

- other tenants living on the property have three daughters and have told her they are affected by the Tenant smoking cannabis on the property;
- the Tenant was permitted to have one cat in the rental unit;
- the Tenant now has two cats and one dog;
- she has given the Tenant written notice to remove the dog and the second cat;
- the other tenants living on the property have told her they have asthma and avoid using the back yard for fear of the dog triggering their asthma; and
- she has noticed dog and cat feces on the property, which she presumes is from the Tenant's pets;
- on November 03, 2020 she gave the Tenant written notice to enter the unit on November 08, 2020;
- the Tenant informed the Landlord she could not enter the unit on November 08, 2020; and
- the Tenant refused to remove a swing which she placed in the common yard of the residential complex.

At the hearing the Landlord was asked to explain why the Landlord wished to end the tenancy because the Tenant was keeping additional pets in the rental unit without the consent of the Landlord. On at least three occasions during the hearing the Landlord stated she was not ending the tenancy because of additional pets.

The Landlord stated that the primary reason for ending this tenancy is that the Tenant is smoking cannabis inside the rental unit. In support of this reason for ending the tenancy the Landlord declared that:

- she made it clear to the Tenant prior to the start of the tenancy that there was no smoking or vaping on the residential property;
- not smoking on the property is a very important term of the tenancy agreement;
- the tenancy agreement declares that there is no smoking or vaping on the residential property;
- the Tenant initialled the portion of the tenancy agreement that prohibits smoking/vaping;
- other tenants living on the property informed her, on several occasions, that the smell of cannabis was emanating from the rental unit;

- on September 27, 2020 she reminded the Tenant about that smoking was not allowed on the residential property and the Tenant informed her that everybody smoked “weed”;
- she was in the backyard of the residential property on September 30, 2020, at which time the smell of cannabis was emanating from the open window of the rental unit;
- on October 05, 2020 she gave the Tenant written notice that she was breaching a material term of tenancy agreement by smoking in the rental unit and that she will be served with notice to end the tenancy if she continues to smoke on the property;
- a copy of the October 05, 2020 warning letter was submitted in evidence;
- tenants living on the residential property informed her that the Tenant continued to smoke cannabis in the unit after October 05, 2020; and
- on November 03, 2020 tenants living on the residential property gave notice to end their tenancy, effective December 30, 2020.

The Landlord submitted a copy of the notice to end tenancy served to her by tenants living on the residential property. In that written notice the tenants declare that the Tenant is smoking cannabis in her rental unit, that the smell of the cannabis is entering their home, and the smell is giving them headaches.

The Landlord submitted a copy of a written submission from the same tenants living on the property, dated November 26, 2020, in which they declare that:

- they have smelled cannabis in the back yard on several occasions since the Tenant moved onto the property;
- they have never smelled cannabis in the yard prior to the Tenant moving onto the property;
- they do not open their kitchen window due to the smell of cannabis coming from the rental unit;
- they have asthma and avoid the backyard;
- the Tenant has significantly “interfered and disturbed our residency”; and
- they are moving out of the unit because of the Tenant.

Analysis

Section 47 of the *Act* authorizes a landlord to end a tenancy for a variety of reasons.

On the basis of the undisputed evidence, I find that on November 08, 2020 the Landlord personally served the Tenant with a One Month Notice to End Tenancy for Cause,

served pursuant to sections 47(1)(c), 47(1)(d)(i), 47(1)(d)(ii), and 47(1)(h) of the *Act*. The Landlord only needs to establish grounds to end the tenancy for one of those reasons.

As the Landlord clearly testified at the hearing that she was not ending the tenancy because the Tenant was keeping additional pets in the unit without the consent of the Landlord, I have not considered whether this tenancy should end because of the additional pets. Although the information provided with the One Month Notice to End Tenancy for Cause suggests that the tenancy was ending, in part, because of additional pets, the Landlord made it clear during the hearing that she did not wish to end the tenancy for that reason. I have, therefore, not considered whether this tenancy should end because of the additional pets.

I find that the Landlord has established grounds to end the tenancy, pursuant to section 47(1)(h) of the *Act*, because she breached a material term of the tenancy by smoking cannabis in the rental unit and she continued to do so after receiving written notice to refrain from smoking on the property.

A material term of the tenancy agreement is a term that both parties agree is so important that the most trivial breach of that term gives the other party the right to end the agreement. On the basis of this information provided by the Landlord and in the absence of any evidence from the Tenant, I find that not smoking on the property is a material term of the tenancy agreement.

My conclusion that not smoking is a material term of the tenancy agreement was heavily influenced by the undisputed testimony that the Tenant initialled the term of the tenancy agreement that prohibits smoking on the property. By initialling this term of the tenancy agreement, I find that the Tenant acknowledged the importance of it.

On the basis of the undisputed evidence, I find that on September 27, 2020 the Landlord reminded the Tenant that smoking was not allowed on the residential property. I find the Tenant's response to that warning was that everybody smoked "weed", which serves to corroborate the Landlord's submission that the Tenant was smoking cannabis on the property. Had the Tenant not been smoking on the property, one would expect her to inform the Landlord that she had not been smoking on the property.

On the basis of the undisputed evidence, I find that on September 30, 2020 the Landlord smelled cannabis coming from the open window of the rental unit. As this was only 3 days after the Tenant was cautioned about smoking, I find that the Tenant was

clearly not complying with non-smoking term of the tenancy agreement.

On the basis of the undisputed evidence, I find that on October 05, 2020 the Landlord gave the Tenant written notice that she was breaching a material term of tenancy agreement by smoking in the rental unit and that she will be served with notice to end the tenancy if she continues to smoke on the property.

On the basis of the written submissions of other tenants living on the residential property, I find that the Tenant smoked cannabis in the rental unit on several occasions and that she continued to smoke cannabis in the unit after receiving written notice to refrain from smoking on the property. I find the fact the Tenants gave notice to end their tenancy on November 03, 2020 because of the Tenant smoking strongly suggests that the Tenant continued to smoke on the property after receiving the written notice to refrain. Had the Tenant ceased smoking on October 05, 2020, I find it highly unlikely that the other tenants would have given notice to end their tenancy on November 03, 2020 due to smoking.

I find that the Landlord has also established grounds to end the tenancy, pursuant to section 47(1)(d)(i) of the *Act*, because the smoking of cannabis has significantly interfered with or unreasonably disturbed other tenants living on the property. On the basis of the written submissions of the other tenants, I find that the smell of cannabis gave them headaches, prevented them from opening their kitchen window, and caused them to move out of their unit. I find that these are significant disturbances, exacerbated by the fact the Tenant did not refrain from smoking when directed to do so.

As the Landlord has established that this tenancy should end due to smoking on the property, I find there is no reason to consider any of the other issues raised by the Landlord during the hearing.

As the Landlord has established that this tenancy should end due to smoking on the property, I dismiss the Tenant's application to cancel the One Month Notice to End Tenancy for Cause.

As I have dismissed the Tenant's application to cancel the One Month Notice to End Tenancy for Cause and the One Month Notice to End Tenancy for Cause complies with section 52 of the *Act*, I must grant the Landlord an Order of Possession, pursuant to section 55(1) of the *Act*.

As the Tenant has failed to establish the merits of her Application for Dispute

Resolution, I dismiss her application to recover the fee for filing the Application for Dispute Resolution.

Conclusion

I grant the Landlord an Order of Possession that is effective at 1:00 p.m. on February 15, 2021. This Order may be served on the Tenant, filed with 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 *Act*.

Dated: February 02, 2021

Residential Tenancy Branch