Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Jamer Holdings Inc
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC LRE

Introduction

The tenant filed an Application for Dispute Resolution on December 6, 2020 seeking an order to cancel the One Month Notice to End Tenancy for Cause (the "One-Month Notice"), and to set conditions on the landlord's right to enter the unit. The matter proceeded by way of a hearing pursuant to s. 74(2) of the *Residential Tenancy Act* (the "*Act*") on March 2, 2021.

Both parties attended the conference call hearing. I explained the process and both parties had the opportunity to ask questions and present oral testimony during the hearing.

The tenant stated that they delivered their prepared evidence for this hearing in person, and via express post. The landlord confirmed they received this package. The landlord delivered their prepared evidence to the tenant in person. On the basis that both parties provided full disclosure of evidence to the other, the hearing proceeded.

Issue(s) to be Decided

Is the tenant entitled to cancellation of the One-Month Notice, pursuant to s. 47 of the *Act*?

If not, is the landlord entitled to an order of possession, pursuant to s. 55 of the *Act*?

Is the landlord's right to enter the rental unit suspended or restricted, pursuant to s. 70 of the *Act*?

Background and Evidence

The original tenancy here began in 2010. The agreement provided by the landlord for this hearing is that signed on May 30, 2019. The tenant pays the landlord $550 per month on the first day of each month. The agreement specifies that: the landlord may enter the unit and view the state of repair; and the tenant "will not smoke (any substance) in the property."

The landlord provided the background on why they issued the One-Month Notice on November 27, 2020. This issue with the tenant and cannabis began in early 2016. The landlord noticed odours and provided written notices to the tenant. In response to this, the tenant said they would stop, and they would smoke outside, not in the rental unit.

The landlord issued an end-of-tenancy notice for this reason on October 30, 2016. The tenant promised: "I will not use in my apartment and will make other arrangements when I need to use it." According to the landlord, a subsequent written warning in February 2017 had the tenant misunderstand what "using" cannabis meant, and again they promised that if ever using again they would leave immediately.

In September 2018 another tenant in a separate unit complained of smell, to the degree that it burns their eyes. This description is that the smell would rise through the ceiling, primarily in the bedroom and bathroom area. This smell was "not covered up" by the tenant.

In late 2020, contractors undertook required repair work in the unit. They provided their account to state that there was a smell emanating from the tenant's unit. They provided a written account and spoke to this in the hearing. In the unit above that of the tenant, the contractor observed residue on the tops of the walls.

The tenant above provided written accounts to the landlord through late 2020 and early 2021 and attended in the hearing as a witness to describe the problem. One entry has it that they have to air their own unit out when returning home because of the lingering smell, and they described how this odour interrupts their sleep and causes nausea and headaches. They have to use wet towels at the base of doorways within their own unit to try to prevent odour entry from one room to another.

The One-Month Notice issued on November 27, 2020 had the landlord indicate two reasons on page 2: that the tenant "significantly interfered with or unreasonably disturbed another occupant or the landlord"; and "breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so."

Page 3 of the One-Month Notice contains the following:

> The tenant continues to smoke cannabis in the property contrary to both the rental agreement in place as well as the verbal and written notes we have from the tenant. This has been an ongoing recurring problem and it is still continuing.

In the hearing, the tenant questioned the landlord's assertions that they were continuing to smoke cannabis in the rental unit. They stated: "2016 was dealt with in 2016" and they quit smoking 4.5 years ago. The "overwhelming smell" is a complete lie and there is no residue in their own rental unit.

They questioned how the smell could be coming through heating vents into the unit above when the heating system is that which operates on hot water, not an air vent. Because of a water issue, the tenant speculated that the tenant was suffering the ill-effects of present mould, with irritated eyes and lungs. This has abated since the renovations completed in early December.

They also provided that they use a product in vaporized form that does not have an odour. They reiterated that "vaping" does not produce a smell. They also produce oils from cannabis extract in their own unit and cook and bake with cannabis and this also produces a very strong smell.

The landlord responded to say they actually do smell the vaping and were aware that the tenant uses a vaporizing mechanism, as it appears in the landlord's own evidence. They did describe how there is air transmission through the building's heating system.

In the hearing the tenant also raised the issue of the landlord's repeated entry into the unit to complete repairs. This caused them to completely lose trust in the landlord with the poor quality of work being done to address the immediate problem needing repair.

In their documentary evidence, the tenant provided that they feel they are being targeted so the landlord can evict and then raise the rent. They enclosed a copy of their dialogue with this branch re: a landlord's legal right to raise rent.

The tenant also included a written dialogue between the landlord and the tenant's parent. The landlord responds to their parent's query to say that "[The tenant] conformed for some time, but it has gotten much worse over the past 18 months." The landlord draws attention to the earlier letter that indicated the tenant would comply, with the understanding that "non-compliance would result in immediate eviction."

The tenant responded to the issues presented by the landlord in the hearing. The tenant's parent also attended and responded directly to some of the landlord's evidence. After they presented their initial statements in the hearing, the tenant who is the Applicant here left the hearing.

Analysis

The *Act* s. 47 states, in part:

> (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
>
> (i) significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property
>
> . . .
>
> (h) the tenant
>
> (i) has filed 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

When a landlord issues a One-Month Notice and the tenant files an application to dispute the matter, the landlord bears the burden of proving they have grounds to end the tenancy and must provide sufficient evidence to prove the reason to end the tenancy.

The landlord provided details of the cause on page 3. I find these details link to the categories described in section 47(d) of the *Act*. I find the landlord's evidence shows sufficient cause for the landlord to issue the One-Month Notice.

The reasons for my finding are as follows:

- Though the tenant feels that issues from 2016 were dealt with in 2016, what the evidence from that period shows is that interference and disturbance (as set in s. 47) began at that time. This has direct relevance to the current situation.
- The evidence from this time period also shows the pattern of the tenant not abiding with the landlord's reminders, and the strict terminology within the tenancy agreement.
- I find "smoking" more generally defines "use" of cannabis by the tenant. This includes what the tenant on their own directly presented as cooking and baking, as well as preparation of oils. These involve use and preparation of cannabis which has a strong

and easily identifiable odour. The preparation of oil involves an extraction process and I find it more likely than not this produces a strong odour from use of a significant amount of cannabis stock. I find this is causing interference and disturbance to others.

- The evidence shows this odour is detectable by another tenant in the building. I accept their evidence both in written form and oral testimony that they make considerable effort to rid the smell from their own unit. This is due to the structure of the building and the heating vents. The tenant did not present compelling evidence that the structure of the building won't allow for the transfer of such odour. Additionally, the evidence shows the tenant is not venting or ensuring adequate return of air from their own unit to ensure odour or vaporized product is not lingering or transferring elsewhere in the building structure.

The *Act* s. 21.1(3) acknowledges that "vapourizing a substance containing cannabis is not smoking cannabis." The tenant here reiterated they are not smoking. I accept their statements on this as credible; however, when it comes to grounds for the landlord issuing the One-Month Notice, all of the other activity involving cannabis, its processing, and its preparation is what is causing interference and disturbance. That is the basis for my finding that the tenancy must end. The activities of the tenant are those requiring special attention for the activities involved, more suited to an environment less confining for them.

I find the tenant's written submissions are irrelevant to the reasons for the issuance of the One-Month Notice. The landlord responded directly to the tenant's written portion in writing for this hearing; however, the issue of a rent increase is not proven and has no relation.

The reasons for the tenant requesting conditions or suspension of the landlord's right to enter the unit are not clear. The tenant expressed misgivings about the work undertaken in December 2020 and the need for repeated entry. I find the tenant feels the need for entry is not needed, and thus constitutes an invasion of their privacy, or perhaps even shows the landlord is building a case for their eviction. I find the need to landlord entry was shown in the facts here, and there is no evidence of the landlord not abiding by the *Act* concerning their entry into the unit. It is even set in the tenancy agreement. I dismiss the tenant's request for conditions on landlord's entry, without leave to reapply.

From the conduct of the tenant in the hearing, I conclude they are not showing a willingness to adjust or vary their activities to lessen the impact it has on others in the building. The tenant's responses were brusque, and they were dismissive of others' concerns. This is bolstered by the evidence that shows repeated reminders and warnings to the tenant in the past – these have gone unheeded. Of consequence here also is the tenant leaving the hearing unannounced approximately halfway through, leaving their parent to respond to issues and ask

further questions. I find the tenant is not taking responsibility for their own behaviour that the evidence shows is disturbing others. I find it more likely than not the problem will continue unchecked, and the relations between tenant-tenant and tenant-landlord will continue to deteriorate.

The *Act* s. 55(1) states that if a tenant applies to dispute a landlord's notice to end tenancy and their Application for Dispute Resolution is dismissed or the landlord's notice is upheld, the landlord must be granted an order of possession if the notice complies with all the requirements of s. 52 of the *Act*. On my review, the One-Month Notice here contains all the required elements set out in s. 52.

By this provision, I find the landlord is entitled to an Order of Possession and the tenancy shall end. The tenant's Application for cancellation of the One-Month Notice is dismissed without leave to reapply.

Conclusion

Under section 55(1) and 55(3) of the *Act*, I grant an Order of Possession effective **March 31, 2021.** Should the tenants fail to comply, 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 *Act*.

Dated: March 4, 2021

Residential Tenancy Branch