



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **CNC, FFT**

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the "Act") for:

- An order to cancel a One Month Notice To End Tenancy for Cause pursuant to sections 47 and 55; and
- Authorization to recover the filing fee for this application from the landlord pursuant to section 72.

The landlord was represented at the hearing by its representative, assistant property manager, SG ("landlord"). The tenant attended on her own behalf. As both parties were present, service of documents was confirmed. The landlord acknowledged service of the tenant's Application for Dispute Resolution and the tenant acknowledged service of the landlord's evidence. Neither party raised any concerns with timely service of documents.

Preliminary Issue

The tenant named the resident manager of the building she lives in as the respondent to her application. The tenancy agreement lists a corporate entity as the landlord. In accordance with section 64(3)(c) of the *Act*, the Application for Dispute Resolution is amended to reflect the proper legal name of the corporate respondent/landlord. The correct name is noted on the cover page of this decision.

Issue(s) to be Decided

Should the One Month Notice to End Tenancy for Cause be upheld or cancelled?
Should the filing fee be recovered?

Background and Evidence

A copy of the tenancy agreement was provided as evidence. The tenancy began on December 1, 2019. Rent is currently \$1,730.00 per month payable on the first day of each month. A security deposit of \$657.25 and a pet damage deposit of \$702.00 was collected from the tenant at the commencement of the tenancy which the landlord continues to hold.

The parties agree that the landlord personally served the tenant with a One Month Notice to End Tenancy for Cause ("Notice") on December 7, 2020. A copy of the Notice was provided as evidence. It is dated December 7, 2020 and provides an effective date of January 31, 2021. The landlord gives the following reasons for ending the tenancy:

1. *the tenant or a person permitted on the property by the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord;*
2. *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;*
3. *the tenant or a person permitted on the property by the tenant has put the landlord's property at significant risk;*

Under "details of cause" the landlord writes:

We are strictly a non-smoking property which is reflected in the signed tenancy agreement. We have ongoing complaints from several other residents that tenant of [tenant's unit] and guest are smoking in the property, causing aggressive disturbing behavior towards other residents and have noise complaints on an ongoing basis. Reports from [city] security who patrol the property are recorded and a [police agency] report was filed File #[provided]

The landlord gave the following testimony. The tenant has been breaching the building's non-smoking policy since 2017. In July 2017, the tenant was issued her first notice for smoking in her suite, a friendly reminder. This was done in response to an email sent to the landlord from another tenant in the building. Both the email and notice were provided as evidence.

Another email was sent to the landlord on September 10, 2018 whereby the other occupant in the building complains that the tenant continues to smoke in her unit after numerous warnings. On March 18, 2020, the landlord sent the tenant a warning that

smoking is a material term of the tenancy and that smoking in the rental unit or the residential property is prohibited. The tenant could be evicted. A further notice was given to the tenant on June 12, 2020.

On October 5, 2020, a different resident in the residential property sends an email to the landlord. It begins, *"I don't know if other neighbours have written you yet."* This occupant asks the landlord to remind the tenant that she and her guest not smoke near the residences. This occupant *"reminded them three times over the weekend."* This occupant also notes an incident of yelling, screaming and objects being thrown the prior Sunday morning between 1:30 a.m. and 3:30 a.m. The prior Friday, the tenant entered another tenant's unit drunk and uninvited and those tenants needed to kick the tenant out.

On October 6th, the landlord sends the tenant another notice advising that cigarette smoke is permeating from the tenant's patio into other suites in the premises and that other residents have witnessed the tenant and another person smoking on the patio numerous times during the evening and during late-night hours.

Another email was sent to the landlord on October 29th complaining of incessant smoking at all times of day and night. This occupant states they have had to ask the tenant and her guest repeatedly not to smoke in front of their home. The night prior, the tenant and her guest were alleged to have smoked heavily in their place with their front door open, wafting out. The occupant notes the tenant's guest's presence has worsened the noise of yelling and disturbances as late as 1:00 or 2:00 in the morning.

The landlord testified that 3 separate occupants in the building have complained about the tenant's smoking, not just a single tenant. There are others who have verbally spoken to the resident manager about the tenant's smoking however they are afraid of the tenant's guest/boyfriend who may retaliate if he knew they complained. They are hesitant to put their complaints into writing. Further, it's not just the tenant the other occupants state smokes. It is also her guest/companion/boyfriend.

The resident manager also provided testimony that she personally witnessed the tenant smoking. It wasn't recent, within the last 3 or 4 months but the manager testified she saw the tenant smoking inside and on the patio during the summer. The tenant lives in a townhouse and if you walk by, the door is open and you can see her smoking. There is an ashtray on the coffee table outside on the patio full of butts.

Lastly, the landlord testified the tenant's boyfriend got into an altercation with another occupant on November 28th. The security team for the property got involved and the tenant's boyfriend made racially insensitive remarks to the guard. The guard's report to the landlord was provided as evidence. In the report, the guard notes the *"neighbour from [tenant's unit] is smoking on his patio when the other resident asks him to stop smoking on the premises"*. This causes the altercation between the boyfriend and the neighbour. A third neighbour provided an email corroborating the landlord's account of events and her attempts to intervene.

The tenant provided the following testimony. She does not smoke in her unit or outside on the balcony. The townhouse development is located on the waterfront and the tenant goes down to the boardwalk to do her smoking.

The resident manager's testimony that she witnessed the tenant smoking on the balcony or inside her unit is a lie. First, her blinds are consistently down, preventing anyone from looking into her unit. Second, the ashtray the manager sees on her balcony is one she empties her saved cigarette butts in when she goes for walks on the water. She does not throw the butts on the ground. She was away throughout the summer in the gulf islands and could not have been seen smoking last summer.

There is one particular neighbour, who has been trying to get her evicted. This is the same neighbour who was involved in the incident with her guest on November 28th. This neighbour has sent threatening text messages to the tenant however the tenant did not save them. The tenant sent emails to the resident manager asking her for assistance in de-escalating the situation with the disgruntled neighbour but got none.

There is a tenant in the building who lives above her who does smoke. The landlord has not done anything to investigate him. Every time the neighbour complains about this tenant however, she is given warnings and now an eviction notice. The resident manager has never come inside the tenant's unit to see if it smells like smoke or gone to the upstairs neighbour's unit to do the same.

The landlord misinterpreted the incident on November 28th. It was the neighbour who started it when the neighbour came to the tenant's balcony looking for an argument. Her guest was out smoking on the road when the neighbour came over hurling insults. A yelling match ensued, and other residents came out, including the one who gave a statement to the landlord. The police were called because the neighbour pushed the tenant's guest, no harm came to the neighbour. The tenant's guest didn't say anything to the security guard who came to investigate and he did not hurl a racial remark to him.

It's a case of he said/she said. After the incident, the police told everyone to go their separate ways and not speak to one another. Since then, the parties have been abiding and the original complaining neighbour is now pleasant. He will be vacating his unit on April 1st and has apologized to the tenant. Everybody around her is happy now and to corroborate this, the tenant provided character statements from other neighbours.

Analysis

The landlord testified she personally served the notice to end tenancy to the tenant on December 7, 2020. This was not disputed by the tenant. I am satisfied the tenant was duly served on that date in accordance with sections 88 and 90 of the *Act*. Section 47 of the *Act* provides that upon receipt of a Notice to End Tenancy for Cause, the tenant may, within ten days, dispute it by filing an application for dispute resolution with the Residential Tenancy Branch. The application was filed two days later, on December 9th.

If the tenant files the application, the landlord bears the burden to prove he or she has valid grounds to terminate the tenancy for cause. The landlord must show on a balance of probabilities, which is to say it is more likely than not, that the tenancy should be ended for the any of the reasons identified in the Notice.

The landlord has provided evidence from at least two different occupants in the residential property complaining of the tenant and/or her guest smoking either in her unit or outside on the balcony. The complaints are dated July 25, 2017, September 10, 2018, October 5, 2020, October 29, 2020 and November 7, 2020. I have read each of the complaints and the notices sent to the tenant in response to the emails. I acknowledge that the landlord has blocked the identities of the senders to protect their privacy. I accept that the resident manager testified others have verbally complained to her of the tenant's smoking but they were unwilling or afraid to provide a written statement.

I have also read the letters of reference from the tenant's neighbours who state they have not seen the tenant smoking in her unit or on the balcony. I note that they are signed by the authors. I have also considered the tenant's argument that the landlord has failed to arbitrate what she believes are false claims against her by a disgruntled neighbour.

Based on the above factors, on a balance of probabilities, I find the landlord has successfully proven their version of events is the most likely to be believed. I've considered the multitude of complaints made against the tenant regarding her smoking and I find the complaints are coming from different tenants living in the residential

property. While the majority of them appear to be from a single neighbour, it appears to me that the single neighbour is not the only one who has issues with the tenant or her guest smoking. Looking at the October 5, 2020 email that begins, *“I don’t know if other neighbours have written you yet.”* it becomes clear to me that this occupant of the complex was unaware that others had complained about the tenant.

Looking at the reference letters sent by the tenant: while it is possible these people have not personally witnessed the tenant or her guest smoking in the unit or on the balcony, the possibility of it happening still exists. I don’t know where in the complex these tenant live, whether they have been inside the tenant’s unit or whether they can see inside.

The tenant argues that the landlord did nothing to alleviate the tension between herself and the neighbour who complained about her smoking. I find that this is a self-serving argument that detracts from the tenant’s own responsibility to refrain from smoking in her unit or outside on the balcony. It stands to reason that the neighbour would stop complaining if the tenant stopped smoking in the vicinity of his unit. The neighbour has a right to complain against another tenant who infringes on his right to quiet enjoyment of his unit. Further, it is not the role of the landlord to make peace between tenants living in the complex; the landlord’s role is to *Act* on complaints sent to them and issue warnings to tenants who are not complying with the *Act*, regulations or tenancy agreement. When the behaviour is not changed the landlord can seek to end the tenancy.

While the tenant argues that the residential property are now peaceful and pleasant with the ‘disgruntled neighbour’ moving on April 1st; the issues leading to the issuance of the notice to end tenancy are what I must look at to determine whether the landlord has provided sufficient evidence to satisfy me the tenancy should end for cause. I find that they have. I find the tenant or a person permitted on the property by the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord by causing cigarette smoke to disturb the other occupants of the building while smoking either in her unit or outside on the balcony. For this reason, I uphold the landlord’s notice to end tenancy.

Section 55 states that if a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, the director must grant to the landlord an order of possession of the rental unit if the landlord's notice to end tenancy complies with section 52 [*form and content of notice to end tenancy*]. I have examined the notice to end tenancy and find it complies with form and content provisions of section 52. As the

effective date stated on the notice to end tenancy has passed, I award the landlord an order of possession effective two days after service upon the tenant.

As the tenant's application was not successful, the tenant is not entitled to recovery of the \$100.00 filing fee for the cost of this application.

Conclusion

I grant an Order of Possession to the landlord effective **2 days after service on the tenant**. Should the tenants or anyone on the premises fail to comply with this Order, this Order may be filed and enforced in 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: March 08, 2021

Residential Tenancy Branch