



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC

Introduction

This hearing dealt with the tenant's application pursuant to section 47 of the *Residential Tenancy Act* (the "Act") for cancellation of a 1 Month Notice to End Tenancy for Cause (the "1 Month Notice").

Both parties attended the hearing and were given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses. The landlord was assisted by family members and an interpreter. The tenant was assisted by a family member and an advocate.

As both parties were present service was confirmed. The parties each testified that they received the respective materials and based on their testimonies I find each party duly served in accordance with sections 88 and 89 of the *Act*.

Issue(s) to be Decided

Should the 1 Month Notice be cancelled? If not is the landlord entitled to an Order of Possession?

Background and Evidence

The parties agree on the following facts. This periodic tenancy began in 2006. The current monthly rent is \$625.00. A security deposit of \$240.00 was collected at the start of the tenancy and is still held by the landlord. The rental unit is one of two rental suites in a detached home with the landlord occupying the main floor of the building. The occupant of the other suite recently ended the tenancy in July, 2020 after residing in the building for over 17 years.

The landlord submits that a term of the tenancy agreement prohibits the tenant from smoking indoors. In their written submissions the landlord states that the tenant abided by the agreement for most of the tenancy. The landlord submits that the tenant's smoking became an issue in 2020 when the other occupant began complaining about the tenant's proximity to their door and window when smoking outdoors. The landlord says that the other occupant ended their tenancy due to the issue and disagreements with the tenant. In their testimony the landlord and their family member said that the tenant has smoked indoors from the inception of the tenancy despite multiple conversations about the issue.

The landlord issued the present 1 Month Notice dated December 31, 2020 providing the reasons for the tenancy to end as:

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;*
- *put the landlord's property at significant risk.*

Tenant has engaged in illegal activity that has, or is likely to:

- *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 provides some details of the issue as follows:

Over the last year, the tenant's unit has had various types of smoke seep into other areas in the house...I have repeatedly requested the tenant to stop and he has assured me but despite these repeated assurances the smoking continues. My wife and I are seniors in our late 70's and we have respiratory issues and we are unable to bare the fumes. Many times the odour and smoke seeps through late at night when we are trying to sleep and after breathing in these fumes we are unable to fall asleep.

Analysis

Section 47 of the *Act* provides that upon receipt of a notice to end tenancy for cause, the tenant may, within ten days, dispute the notice by filing an application for dispute resolution with the Residential Tenancy Branch.

In the present case the parties gave evidence that the tenant was served with the 1 Month Notice on December 31, 2020 and filed their application for dispute resolution on January 4, 2021. Therefore, the tenant was within the statutory timeline to dispute the notice.

If the tenant files an application to dispute the notice, the landlord bears the burden to prove, on a balance of probabilities, the grounds for the 1 Month Notice. 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 reasons identified in the 1 Month Notice.

In the matter at hand the landlord must demonstrate that the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord, caused serious jeopardy to health and safety or put the property at significant risk. Alternately, that the tenant has engaged in illegal activity that has or is likely to adversely affect the quiet enjoyment, security, safety or well-being of others or jeopardize the lawful right or interests.

Based on the totality of the evidence, I find that the landlord has not met their evidentiary burden on a balance of probabilities to show that there is a basis for this tenancy to end.

The landlord explained that the primary issue is the tenant's smoking on or about the property. I find that the act of smoking is not inherently an illegal activity that would give rise to a basis to end a tenancy. I therefore, focus my analysis on whether the act of smoking or using smoking related paraphernalia causes unreasonable disturbance, jeopardy to health or risk to the property.

I find the testimony of the landlord and their family members to be insufficient to demonstrate that the tenant's behaviour can be properly characterized as unreasonable. The submission of the landlord is that the tenant abided by the unwritten terms of the tenancy agreement and smoked outside of the rental unit for the preceding 14 years of their tenancy. I note that the testimony provided by the landlord and their family member saying that the tenant has smoked inside of the rental unit since the

inception of the tenancy in violation of the stated rules directly contradicts their written submissions that the tenant abided by the rules until 2020.

The landlord references complaints about the tenant by the other occupant but provides little documentary materials in support, no written complaints, correspondence regarding the issue, warning letters or logs created at the time to document the issue. The landlord submits a notice to end tenancy by the other occupant but the notice does not make any reference to the reason why they have chosen to vacate the building. I find that the landlord's testimony to be insufficient to establish that the other occupant ended their tenancy due to issues caused by the tenant.

I find the landlord's complaints regarding the tenant to have little support in documentary materials and to be vague and internally inconsistent. If the tenant has been smoking inside of the rental building throughout the course of this 14 year tenancy and this has been an ongoing issue it would be reasonable to expect that there would be some correspondence, notes or other record indicating this was unacceptable. I find the landlord's suggestion that the tenant suddenly began violating the rules of the tenancy 14 years into a tenancy after abiding by the rules to strain credulity.

I find the landlord's submission that the tenant's smoking in or near the rental unit causes significant interference, jeopardy to health and safety and risk to the property to be hyperbolic and not supported in the evidence. I find that the lack of any action, warning or complaints during the 14 years prior to the issuance of the 1 Month Notice to indicate that the tenant's conduct was not seen to be a violation that would give rise to an end of the tenancy. I find insufficient evidence that the tenant's conduct changed as of 2020 such that their behaviour would now give rise to a basis to end the tenancy. I find the landlord's documentary evidence to be contradicted by their own testimony and the testimony of their family member. Based on the totality of the materials I find the landlord has not met their evidentiary burden on a balance of probabilities to establish a basis for this tenancy to end.

Consequently, I allow the tenant's application to cancel the 1 Month Notice. The notice is of no further force or effect. This tenancy continues until ended in accordance with the *Act*.

Conclusion

The tenant's application to cancel the 1 Month Notice is granted. This tenancy continues until ended in accordance with the *Act*.

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 29, 2021

Residential Tenancy Branch