



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Smithers Community Services
Association and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC

Introduction

This hearing was convened by way of conference call concerning an application made by the tenant seeking an order cancelling a notice to end the tenancy for cause.

The tenant was represented at the hearing by an agent who gave affirmed testimony, and was assisted by his spouse for a hearing issue, who did not testify but observed only.

The landlord was also represented at the hearing by an agent, who was accompanied by an observer who did not testify or take part in the hearing.

The parties' agents each gave affirmed testimony, provided evidentiary material in advance of the hearing, and were given the opportunity to question each other and to give submissions.

No issues with respect to service or delivery of documents or evidence were raised, and all evidence provided has been reviewed and is considered in this Decision.

Issue(s) to be Decided

Has the landlord established that the One Month Notice to End Tenancy for Cause was given in accordance with the *Residential Tenancy Act*?

Background and Evidence

The landlord's agent testified that this month-to-month tenancy began on July 1, 2018 and the tenant still resides in the rental unit. Rent in the amount of \$561.00 is payable on the 1st day of each month and there are no rental arrears. At the outset of the

tenancy the landlord collected a security deposit from the tenant in the amount of \$280.00 which is still held in trust by the landlord, and no pet damage deposit was collected. The rental unit is a 1 bedroom unit in a complex containing 16 units, and a copy of the tenancy agreement has been provided for this hearing.

On April 22, 2021 the landlord's agent served the tenant with a One Month Notice to End Tenancy for Cause by posting it to the door of the rental unit. A copy has been provided as evidence for this hearing, and it is dated April 22, 2021 and contains an effective date of vacancy of May 31, 2021. The reasons for issuing it state:

- Tenant or a person permitted on the property by the tenant has:
 - put the landlord's property at significant risk;
- Breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.

The landlord's agent testified that the tenant smokes cigarettes in her unit, which is contrary to the tenancy agreement and a fire hazard. The tenancy agreement specifies:

“30 Rules and Regulations – The tenant agrees to observe the rules and regulations delivered with the tenancy agreement, and such reasonable variations; (b) (the landlord) facility and grounds is a designated non-smoking. All tenants, residents, guests and staff must smoke off grounds or in a designated smoking area. Any violation of this will result in the termination of the tenancy agreement.”

The landlord's agent testified that the tenant is elderly and the landlord's agent is concerned that the tenant may fall asleep with a cigarette in her hand. Although the landlord's agent is not sure that ever happened, it's a potential risk to any property for any person who smokes.

On April 30, 2020 the landlord's agent gave the tenant a written caution notice, and a copy has been provided for this hearing. Another caution notice was given on December 22, 2020, also provided for this hearing. The tenant was also spoken to about smoking at the beginning of the tenancy. There is a designated smoking area in a gazebo which is about 30 or 40 feet from the tenant's rental unit, and also contains a picnic table. The maintenance person blows a path in the snow through that area. Another area is acceptable for smoking which is near the garbage bins, but that area does not have a roof.

The tenant's agent testified that based on the circumstances the landlord has not given the tenant the right tools to have a smoke. The tenant's agent asked the landlord for

another assigned area on the sidewalk, based on measurements away from the building, but the landlord denied that request. The tenant's agent is attempting to solve the situation, but there are no options for moving to another location.

The tenant's agent is seeking compassion from the landlord. The landlord's agent told the tenant's agent that she would extend the effective date of vacancy for a month, but if the tenant smokes, she would be evicted in 24 hours.

The tenant's agent has also provided a document indicating that the tenant's source of supply for cigarettes has been eliminated and her doctor is prescribing a patch. It also states that the tenant has no place to go until she can be relocated to assisted living.

Analysis

Where a tenant disputes a notice to end a tenancy given by a landlord, the onus is on the landlord to establish that it was given in accordance with the *Residential Tenancy Act*, which can include the reason(s) for issuing it.

I do not agree with the landlord's agent that any person who smokes puts the property at significant risk. In this case, there is no evidence of any risk of the tenant falling asleep while smoking, and I do not agree that is a reason for ending the tenancy.

In order to end a tenancy for breach of a material term of the tenancy, the landlord must be able to establish that smoking only in designated areas is a material term of the tenancy, meaning that if the tenant had not agreed to that term, the landlord would not have entered into a tenancy agreement with the tenant. The landlord must also establish that there is a breach of that material term, and that the landlord has made a request in writing to the tenant to correct the breach and provide a reasonable amount of time to correct it.

In this case, the tenancy agreement clearly specifies that any violation will result in the termination of the tenancy agreement, and I am satisfied that it is a material term. There is no question or dispute that the tenant has breached that term, and there is no question or dispute that the tenant was provided caution notices on at least 2 occasions dated April 30, 2020 and December 22, 2020. I also accept the undisputed evidence of the landlord that on April 7, 2021 the tenant admitted to smoking in her bathroom. Therefore, I find that smoking within the rental unit and/or balcony is breach of a material term of the tenancy agreement and a reason for ending the tenancy.

I have reviewed the One Month Notice to End Tenancy for Cause, and I find that it is in the approved form and contains information required by the *Act*. In the circumstances, I find no reason to cancel it, and the tenant's application is hereby dismissed.

The *Residential Tenancy Act* specifies that where I dismiss a tenant's application to cancel a notice to end a tenancy given by a landlord, I must grant an Order of Possession in favour of the landlord, so long as the notice given is in the approved form. Having found that it is in the approved form, I grant an Order of Possession in favour of the landlord. Since the effective date of vacancy has passed, I grant the Order of Possession effective on 2 days notice to the tenant.

Conclusion

For the reasons set out above, the tenant's application is hereby dismissed without leave to reapply.

I hereby grant an Order of Possession in favour of the landlord effective on 2 days notice to the tenant.

This order is final and binding and may be enforced.

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: June 08, 2021

Residential Tenancy Branch