



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 an application by the Tenants pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

1. An Order cancelling a notice to end tenancy - Section 46;
2. An Order for the Landlord’s compliance - Section 62; and
3. An Order to recover the filing fee for this application - Section 72.

The Parties were each given full opportunity under oath to be heard, to present evidence and to make submissions.

Issue(s) to be Decided

Are the Tenants entitled to a cancellation of the notice to end tenancy?

Are the Tenants entitled to an order that the Landlord comply with the tenancy agreement?

Are the Tenants entitled to recovery of the filing fee?

Background and Evidence

The following are agreed or undisputed facts: the tenancy started in 2018. At the outset of the tenancy the Landlord collected \$750.00 as a security deposit. Rent of \$1,400.00 is payable on the first day of each month. Nothing in the tenancy agreement restricts the Tenants from smoking anywhere. In January 2021 the Tenants verbally agreed to only smoke in the yard. The Landlord served the Tenant with a one-month

notice to end tenancy for cause dated March 19, 2021 (the "Notice"). The Notice sets out with details included, the following reason:

The 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, safety or lawful right of another occupant or the landlord;
- put the landlord's property at significant risk.

The Notice details issues with smoking cannabis, use of the laundry facilities and sending texts on March 4 and 6, 2021.

The Landlord states that the Tenants have smoked cannabis in the unit on about 4 occasions between December 2021 and March 2021. The Landlord confirms that there is no evidence of seeing the Tenants smoke in the unit only evidence of smell through the vents into the upper part of the house where the Landlord resides. The Landlord states that although their grandchildren, aged 12 and 14 years, were in the upper part of the house for a period of 4 weeks during this time, they were not disturbed by the smell. The Landlord states that the smell is embarrassing and that the Landlord is only upset by the smell. The Landlord states that the Tenant was given three notices about smoking on the property and confirms that none of the notices referenced any smoking in the unit. The Landlord states that while it believes that the smell will affect the value of the house if they sell the house the Landlord is not likely to sell the house. The Tenant states that they have never smoked anything in the unit and since January 2021 have only been smoking cannabis on the public street.

The Landlord states that the Tenants have disturbed the other tenant in the house by handling this tenant's laundry on days when this tenant has been provided use of the laundry facilities. The Landlord states that this is rude behavior. The Landlord confirms that it has not provided any letter of complaint by the other tenant.

The Landlord states that the Tenant has been sending abusive texts, calling the Landlord a racist and threatening to put the Landlord on social media. The Landlord denies the Tenant's allegations of racism and states that on March 18, 2021 the Tenant was angry, so the Landlord called the police about threats. The Landlord states that no charges were laid and that the police only told the Landlord to do nothing for at least 48 hours to allow the Tenant to calm down.

The Tenant states that the texts were sent to the Landlord after the Landlord racially insulted the Tenant. Tenant DF states that the Landlord has made racist comments and has made an issue with the smoking. The Tenant states that the Landlord has been trying to separate the Tenants.

The Landlord states that the Tenants' evidence is all lies and falsehoods and that they knew of the Tenant's race when they rented the unit to the Tenants.

Analysis

Section 62(3) of the Act provides that the director may make any order necessary to give effect to the rights, obligations and prohibitions under this Act, including an order that a landlord or tenant comply with this Act, the regulations or a tenancy agreement and an order that this Act applies. There is nothing in the tenancy agreement that restricts the Tenants from smoking anywhere on the property. Given the undisputed evidence of an oral agreement by the Tenants to smoke outside the unit I accept that this later oral agreement forms part of the tenancy agreement and is binding on the Parties. I order the Landlord to comply with the tenancy agreement and not restrict the Tenants in relation to smoking anywhere other than inside the unit. While there is nothing in the tenancy agreement that stops the Tenants from smoking in the yard, I would encourage the Tenants to continue smoking only on the street when possible, and particularly while minors are present.

Section 47(1)(d) of the Act provides that a landlord may end a tenancy by giving notice to end the tenancy if 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,
- (ii) seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant, or
- (iii) put the landlord's property at significant risk.

I do not consider the Landlord's evidence of the Tenants' laundry actions to be of any significance as there is no evidence to support that the other tenant sharing the laundry has been disturbed in any way.

I consider that the Landlord's evidence of texts dated prior to the issuance of the Notice does not contain any threats but does support the Tenant's evidence that the only issue with smoking was the Tenants smoking outside the unit. The remainder of the texts are dated on the day of and the days following the issuance of the Notice. These primarily set out the Tenant's frustration with the Landlord and allegations of racism. I also note that the only evidence of police involvement appears to be in relation to the Landlord being cautioned not to interact with the Tenant. As I do not consider allegations of racism to be threats towards the Landlord, I find on a balance of probabilities that the Landlord has not substantiated that the texts support a significant disturbance.

Given the Landlord's evidence that none of the notices to the Tenant mentioned any smoking inside the unit, the texts indicating only an issue with smoking outside and the Tenant's evidence that they have only smoked outside the unit, I find on a balance of probabilities that the Landlord has not substantiated that the Tenants smoked cannabis in the unit thereby causing any disturbance, interference, risk or jeopardy.

For the above reasons I find on a balance of probabilities that the Landlord has not substantiated that the Notice is valid for any of its reasons. The Tenant is entitled to the cancellation of the Notice and the tenancy continues.

As the Tenants' claims have been successful, I find that the Tenants are entitled to recovery of the **\$100.00** filing fee and the Tenants may deduct this amount from future rent payable in full satisfaction of this claim.

Conclusion

The Notice is cancelled, and the tenancy continues.

I grant the Tenant an order under Section 67 of the Act for **\$100.00**. If necessary, this order may be filed in the Small Claims Court 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: July 07, 2021

Residential Tenancy Branch