



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 the *Residential Tenancy Act* (the *Act*) for cancellation of the One Month Notice to End Tenancy for Cause (the "One Month Notice"), pursuant to section 47.

The landlord's general manger (the "G.M."), the landlord's assistant general manager (the "assistant G.M.") and the tenant attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses. The tenant testified that she only intended on calling witnesses if she gets evicted. I informed both parties that I would not render a decision in this hearing and that my written decision would be provided to both parties within 30 days of this hearing. The tenant declined to call any witnesses stating that they are tenants who smoke marijuana and do not want to get involved. The landlord did not call any witnesses.

Both parties agree that the tenant personally served the landlord with this application for dispute resolution and the tenant's evidence but neither could recall on what date. I find that the tenant's application for dispute resolution and evidence were served on the landlord in accordance with sections 88 and 89 of the *Act*.

The G.M. testified that the tenant was personally served with the landlord's evidence on December 6th or 7th of 2021. The tenant testified that she received the landlord's evidence on December 7, 2021. I find that the tenant was served with the landlord's evidence in accordance with section 88 of the *Act*

Both parties were advised that Rule 6.11 of the Residential Tenancy Branch Rules of Procedure prohibits the recording of dispute resolution hearings. Both parties testified that they are not recording this dispute resolution hearing.

Both parties confirmed their email address for service of this decision and order.

I note that section 55 of the *Act* requires that when a tenant submits an application for dispute resolution (the “application”) seeking to cancel a notice to end tenancy issued by a landlord I must consider if the landlord is entitled to an order of possession if the application is dismissed or the landlord’s notice to end tenancy is upheld and the landlord has issued a notice to end tenancy that is compliant with the *Act*.

Issues to be Decided

1. Is the tenant entitled to a cancellation of the One Month Notice, pursuant to section 47 of the *Act*?
2. If the tenant’s application is dismissed or the landlord’s One Month Notice is upheld, and the One Month Notice complies with the *Act*, is the landlord entitled to an Order of Possession, pursuant to section 55 of the *Act*?

Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of both parties, not all details of their respective submissions and arguments are reproduced here. The relevant and important aspects of the tenant’s and landlord’s claims and my findings are set out below.

Both parties agreed to the following facts. This tenancy began on July 9, 2020 and is currently ongoing. Monthly rent in the amount of \$900.00 is payable on the first day of each month. A security deposit of \$450.00 was paid by the tenant to the landlord. A written tenancy agreement was signed by both parties and a copy was submitted for this application.

Both parties agree that the tenant was personally served with the One Month Notice on July 14, 2021. The One Month Notice was entered into evidence and states that the tenant must move out of the subject rental property by August 31, 2021. The tenant applied to cancel the One Month Notice on July 23, 2021. The One Month Notice states the following reasons for ending the tenancy:

- 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, and
- Breach of material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.

Section 2 and section 3 of the tenancy agreement addendum signed by the tenant states:

2. There is to be **no smoking** of any kind in the building or the rental unit. Smoking must be 10m away from the building. This includes all forms of smoking, vaping, and burning incense....
3. There is to be no processing or use of cannabis related products that causes an odor to be present in the building.

The G.M. testified that the tenant frequently smokes in the subject rental property and has been issued numerous warning letters regarding smoking in the unit but has not stopped smoking. The agent entered into evidence warning letters about smoking in the unit dated:

- December 22, 2020,
- January 18, 2021,
- April 14, 2021,
- July 14, 2021, and
- December 7, 2021.

The G.M. testified that the tenant told the building manager that she smokes marijuana in the subject rental property. The December 22, 2020 drafted by the building manager states:

I have received complaints of a strong odor of marijuana outside of your apartment. I already know you are a smoker of the substance, as per our previous conversations.

Whether you are smoking the pot or processing it in your apartment, the practice must stop immediately. If the smell is detected again, it will affect your tenancy.

The G.M. testified that he has received numerous complaints about the smell of marijuana in the hallways coming from the subject rental property and has smelt it

himself on a number of occasions. G.M. testified that the subject rental property is a non-smoking building, and the tenant has disturbed the other tenants and breached a material term of the tenancy agreement.

The April 14, 2021 warning letter stated:

This is your final warning for polluting the corridor with the smell of your marijuana. I noticed it yesterday and I have had complaints from two other tenants. The next time you will get an eviction notice.

The G.M. testified that on July 14, 2021 he and the assistant G.M. served the tenant with the One Month Notice. The G.M. testified that the smell of marijuana was emanating from the subject rental property at that time. The G.M. testified that the tenant opened the door and denied smoking pot but showed them a jar full of roaches. The assistant G.M. confirmed the above testimony of the G.M.

The tenant testified that she does not smoke and is allergic to smoke. The tenant denied telling the manager that she smokes marijuana and denied showing the G.M. and the assistant G.M. a jar of roaches on July 14, 2021.

The tenant entered into evidence an unsigned letter from another tenant which states in part:

....Also since the new supers have come to the building they have harassed all tenants that smoke cigarettes and marjauna [sic].... I understand that this is a drug free building but my weed is my medication and it sad to be treated meaning because of it...

The tenant entered into evidence several pages of handwritten notes, one of which states:

[the G.M.] is lying I never have smoke pot in this apt [unit redacted for privacy] he also came with a Building worker (nice) to confirm this the worker agreed he never smelled coridoor [sic] and perhaps (a roach) in the droor [sic] by the door (smelled) once. I threw it out.....A joint can be smoked and saved. (smoked again) called Roach it does smell. I told them the truth. (WitchHunt)....

The G.M. testified that he is surprised that the tenant testified that she does not smoke and is allergic because he has personally witnessed her smoking outside the subject

rental building as recently as last week. The tenant testified that she wouldn't smoke outside the building, that she has access to a car and would drive away to smoke.

Analysis

Based on the testimony of both parties I find that the landlord personally served the tenant with the One Month Notice on July 14, 2021. Upon review of the One Month Notice I find that it meets the form and content requirements of section 52 of the *Act*.

Given the conflicting testimony, much of this case hinges on a determination of credibility. A useful guide in that regard, and one of the most frequently used in cases such as this, is found in *Faryna v. Chorny* (1952), 2 D.L.R. 354 (B.C.C.A.), which states at pages 357-358:

The credibility of interested witnesses, particularly in cases of conflict of evidence, cannot be gauged solely by the test of whether the personal demeanor of the particular witness carried conviction of the truth. The test must reasonably subject his story to an examination of its consistency with the probabilities that surround the currently existing conditions. In short, the real test of the truth of the story of a witness in such a case must be its harmony with the preponderance of the probabilities which a practical and informed person would readily recognize as reasonable in that place and in those circumstances.

I find that the testimony of the G.M. is in harmony with the testimony of the assistant G.M. and the warning letters sent to the tenant regarding smoking in the subject rental property. I find that the tenant's testimony is not in harmony with her own notes or any of the testimony and documentary evidence provided. The tenant testified that she does not smoke and does not have roaches in the subject rental property, this testimony is not supported by the tenant's own notes in which she confirms the presence of a roach in a drawer by the door in the subject rental property. I therefore prefer the testimony of the G.M. and assistant G.M. over that of the tenant.

Based on the G.M.'s testimony, the assistant G.M.'s testimony and the warning letters entered into evidence, I find that the tenant regularly smokes in the subject rental property contrary to the tenancy agreement addendum.

Section 47(1)(d)(i) states 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

significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property.

I find that it is common knowledge that second-hand smoke is a carcinogen and that the smoke does not always remain inside the unit in which it originated. Based on the testimony of the G.M. I find that other tenants in the subject rental property have complained to the landlord about the second-hand smoke emanating from the subject rental property. I accept the G.M.'s testimony that in response to the second-hand smoke complaints levied against the tenant, the tenant was sent warning letters on:

- December 22, 2020,
- January 18, 2021,
- April 14, 2021,
- July 14, 2021,
- December 7, 2021.

I note that the tenant did not dispute receipt of the above warning letters. I accept the G.M.'s testimony that the tenant's smoke did not stay in the subject rental property and was present in the hallway and other units.

I find that the tenant unreasonably disturbed other tenants in the building by smoking in the subject rental property which is a non-smoking building. I find, on a balance of probabilities, that the tenant's smoke made its way into common spaces such as hallways and into other rental units. I find that exposing other tenants to carcinogens constitutes an unreasonable disturbance, contrary to section 47(1)(d)(i) of the *Act*. I therefore uphold the One Month Notice. The G.M. testified that the landlord is not seeking a two-day Order of Possession and is agreeable to an end of tenancy on December 31, 2021.

Section 55 of the *Act* 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:

- (a) the landlord's notice to end tenancy complies with section 52 [*form and content of notice to end tenancy*], and
- (b) the director, during the dispute resolution proceeding, dismisses the tenant's application or upholds the landlord's notice.

I find that since the One Month Notice complies with section 52 of the *Act* and the One Month Notice was upheld, the landlord is entitled to an Order of Possession effective December 31, 2021.

As I have determined that this tenancy will end pursuant to section 47(1)(d)(i) of the *Act*, I decline to consider if the landlord is entitled to an Order of Possession under any other subsection of section 47 of the *Act*.

Conclusion

Pursuant to section 55 of the *Act*, I grant an Order of Possession to the landlord effective at **1:00 p.m. on December 31, 2021**, which should be served on the tenant. Should the tenant fail to comply with this Order, 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 *Residential Tenancy Act*.

Dated: December 17, 2021

Residential Tenancy Branch