



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding VALLEY COURT PROPERTIES
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC

Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution filed by the Tenant on August 27, 2021 (the "Application"). The Tenant applied to dispute a One Month Notice to End Tenancy for Cause dated August 21, 2021 (the "Notice").

The Tenant appeared at the hearing with T.B., their social worker, A.H., their advocate and three witnesses being J.B., C.H. and H.K. The witnesses were not involved in the hearing until required. P.L. and J.L. appeared at the hearing for the Landlord. I explained the hearing process to the parties. I told the parties they are not allowed to record the hearing pursuant to the Rules of Procedure (the "Rules"). The parties and witnesses provided affirmed testimony.

Both parties submitted evidence prior to the hearing. I addressed service of the hearing package and evidence.

P.L. and J.L. confirmed receipt of the hearing package and Tenant's evidence and did not raise any issues with service.

A.H. advised that the Tenant received the Landlord's evidence December 30, 2021 and that they have not had enough time to prepare for the hearing. A.H. sought an adjournment.

Pursuant to rule 3.15 of the Rules, the Landlord was required to serve their evidence on the Tenant not less than seven days before the hearing. The Landlord did serve their evidence on the tenant not less than seven days before the hearing and therefore complied with rule 3.15 of the Rules. The Landlord's evidence is not extensive and I am not satisfied based on the submission provided that the Tenant did not have time to

prepare for the hearing in the circumstances. I also note that the Notice specifically sets out the grounds for it under the “Details of Cause” and therefore the Tenant should have been aware in August, when the Notice was issued, of the issues they needed to address in their dispute of the Notice.

I considered rule 7.9 of the Rules in relation to adjournments and found there was no basis for an adjournment because the Landlord complied with the Rules in relation to the timing of service and I was not satisfied based on the submission provided that the Tenant did not have enough time to prepare for the hearing.

I proceeded with the hearing. The parties were given an opportunity to present relevant evidence, make relevant submissions and ask relevant questions. I have considered the documentary evidence submitted and all oral testimony of the parties and witnesses. I will only refer to the evidence I find relevant in this decision.

Issues to be Decided

1. Should the Notice be cancelled?
2. If the Notice is not cancelled, should the Landlord be issued an Order of Possession?

Background and Evidence

A written tenancy agreement was submitted as evidence and the parties agreed it is accurate. The tenancy started November 30, 2000 and is a month-to-month tenancy. Rent at the start of the tenancy was \$375.00 due by the first day of each month. The Tenant paid a \$187.50 security deposit.

The Notice was submitted as evidence. The grounds for the Notice are:

1. Tenant or a person permitted on the property by the Tenant has:
 - a. Significantly interfered with or unreasonably disturbed another occupant or the Landlord.
 - b. Seriously jeopardized the health or safety or lawful right of another occupant or the Landlord.

- c. Put the Landlord's property at significant risk.
2. Tenant or a person permitted on the property by the 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.
3. Tenant or a person permitted on the property by the Tenant has engaged in illegal activity that has, or is likely to adversely jeopardize a lawful right or interest of another occupant or the Landlord.
4. Breach of a material term.

The "Details of Cause" on the Notice outline issues including the Tenant yelling, swearing and using abusive language towards tenants and the manager of the building, the Tenant smoking, the Tenant permitting E.G. on the property and the Tenant failing to maintain the rental unit.

The parties agreed the Notice was served, and received by the Tenant, August 21, 2021.

Both parties provided detailed written submissions. The parties were given an opportunity to add to their written submissions.

P.L. for the Landlord testified that the Landlord has given the Tenant numerous opportunities to change their behaviour and the Tenant has never done so.

A.H. for the Tenant pointed out that there is nothing in the tenancy agreement about not smoking in the unit or on the property and submitted that this must have changed after the Tenant moved in. A.H. asked P.L. and J.L. if the Tenant agreed to a change in the smoking policy or signed anything about this and whether the Tenant was made to understand the change.

P.L. testified as follows in response to A.H.'s question. The Tenant used to smoke in the rental unit. The parties agreed verbally that the Tenant would stop smoking in the unit or on the property if the Landlord painted the unit and fixed all the walls, which the Landlord did.

C.H. for the Tenant testified that they live in a building that looks down on the complex that the rental unit is in and work at a location that the Tenant attends. C.H. provided

testimony about the Tenant's behaviour and demeanour. C.H. testified that they see the Tenant every day multiple times a day crouched in the alleyway smoking. C.H. testified that they have never observed the Tenant cause any issues.

In response to questions by P.L., C.H. provided the following relevant testimony. C.H. has lived in the same place for the last two years. C.H.'s place gives them a birds eye view of the courtyard of the rental unit building. C.H. has not seen RCMP or ambulances at the rental unit building.

J.B. for the Tenant provided the following relevant testimony. J.B. does not believe that the Tenant asks others for money or cigarettes as alleged by the Landlord. J.B. sometimes cleans the rental unit when they visit the Tenant. The Tenant washes the floor of the rental unit. The rental unit is in pretty good shape. T.B. had someone attend the rental unit and clean it after the Tenant received a warning letter about cleanliness of the rental unit. J.B. has not seen anything out of the ordinary in relation to the cleanliness of the rental unit.

In response to questions by P.L., J.B. provided the following relevant testimony. J.B. probably told P.L. that J.B. would not clean the rental unit unless J.B. got paid for it and that the Tenant has funds available for cleaning; however, this does not mean J.B. would not help the Tenant out. J.B. has cleaned the rental unit a couple times since August. There could be marks on the wall where the Tenant keeps their bike; however, the wall is not bad.

H.K. for the Tenant provided the following relevant testimony. The rental unit has been tidy when H.K. has visited. The Tenant maintains the rental unit with the help of J.B. H.K. does see the Tenant in the back alley smoking. The Tenant is self-sufficient and not disruptive.

In response to questions by P.L., H.K. provided the following relevant testimony. H.K. was last in the rental unit half an hour before the hearing. Prior to this, H.K. was in the rental unit a month ago. H.K. attends the rental unit four or five times a year. H.K. is not aware of the Tenant asking others for money, cigarettes or toilet paper.

T.B. for the Tenant provided the following relevant testimony. T.B. has been to the rental unit once a month and it is tidy, T.B. has never had concerns about the condition of the unit.

The Landlord provided the following relevant documentary evidence:

- A video of the Tenant smoking from December 20, 2021
- Two undated photos of the Tenant smoking
- A photo of the Tenant smoking from October 12, 2021
- The tenancy agreement
- Written submissions
- A May 30, 2021 letter from P.L. and J.L. with a “Final Warning” attached
- A letter from an employee of a business by the rental unit building
- A letter dated August 19, 2019 to the Tenant from P.L. and J.L. about cleanliness of the unit
- An unsigned document stating it is notes from the on site manager of the rental unit building
- An unsigned undated letter from J.T.

The Tenant provided the following relevant documentary evidence:

- Written submissions
- An unsigned letter from J.R. dated December 13, 2021
- Email communications
- The May 30, 2021 letter from P.L. and J.L.
- December 15, 2021 letter from T.B. about a disclosure request
- The Notice

Analysis

The Notice was issued pursuant to section 47 of the *Residential Tenancy Act* (the “Act”) and the following subsections:

47 (1) A landlord may end a tenancy by giving notice to end the tenancy if one or more of the following applies...

(d) 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;
- (e) the tenant or a person permitted on the residential property by the tenant has engaged in illegal activity that...
 - (ii) has adversely affected or is likely to adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant of the residential property, or
 - (iii) has jeopardized or is likely to jeopardize a lawful right or interest of another occupant or the landlord;
- (h) the tenant
 - (i) has failed to comply with a material term, and
 - (ii) has not corrected the situation within a reasonable time after the landlord gives written notice to do so...

The Tenant had 10 days from receiving the Notice to dispute it pursuant to section 47(4) of the *Act*. There is no issue that the Tenant received the Notice August 21, 2021. The Application was filed August 27, 2021, within time.

The Landlord has the onus to prove the grounds for the Notice pursuant to rule 6.6 of the Rules. The standard of proof is on a balance of probabilities meaning it is more likely than not the facts occurred as claimed.

When one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof has not met the onus to prove their claim and the claim fails.

The issue before me is whether the Landlord had grounds to issue the Notice when it was served, being August 21, 2021.

The parties disagree about the grounds for the Notice; therefore, I have focused on what compelling independent evidence there is before me to support each position.

In relation to the Landlord's evidence, the written submissions, letter dated May 30, 2021 with the final warning attached and the letter dated August 19, 2019 are authored by P.L. and J.L. and therefore I do not find these to be compelling evidence that corroborates the testimony and submissions of P.L. and J.L.

The video from December 20, 2021 does not assist because it relates to events that occurred after the Notice was issued.

The two undated photos do not assist because they are not dated and therefore, I am not satisfied they were taken prior to the Notice being issued. The photo of the Tenant from October 12, 2021 does not assist because it was taken after the Notice was issued. I note that the Landlord has not submitted any photos or videos of the Tenant smoking in or around the rental unit showing a date prior to the Notice being issued.

I do not find the letter from an employee of a nearby business to assist because, in my view, any issue between the business and the Tenant is not a tenancy issue that should result in the end of the tenancy. I find the letter supports that there is an issue between the Tenant and business rather than the Tenant and another tenant or occupant living in the rental unit building or the Landlord of the rental unit building.

In relation to the notes from the on site manager and J.T., these documents are not signed by their purported authors and neither of the purported authors were called as a witness at the hearing. Given the documents are not signed, I give little weight to them as independent evidence corroborating the testimony and submissions of P.L. and J.L.

The Tenant did call witnesses at the hearing and their testimony tended to support the Tenant's position although I acknowledge that none of the witnesses are present at the rental unit full time and therefore it is unlikely that they are fully aware of what is happening with the Tenant in the rental unit and at the rental unit building.

However, it is the Landlord that has the onus to prove the grounds for the Notice. I do not find that the Landlord has provided sufficient compelling evidence to show that the issues outlined in the "Details of Cause" on the Notice are in fact issues that meet the grounds for ending a tenancy pursuant to sections 47(1)(d) or (e) of the *Act*.

In relation to the ground of breach of a material term, Policy Guideline 8 states at page two:

To end a tenancy agreement for breach of a material term the party alleging a breach – whether landlord or tenant – must inform the other party in writing:

- that there is a problem;
- **that they believe the problem is a breach of a material term of the tenancy agreement;** (emphasis added)
- that the problem must be fixed by a deadline included in the letter, and that the deadline be reasonable; and
- that if the problem is not fixed by the deadline, the party will end the tenancy.

Where a party gives written notice ending a tenancy agreement on the basis that the other has breached a material term of the tenancy agreement, and a dispute arises as a result of this action, the party alleging the breach bears the burden of proof. A party might not be found in breach of a material term if unaware of the problem.

I have reviewed the documentary evidence and do not see any communication provided by the Landlord to the Tenant that meets the criteria for a breach letter set out in Policy Guideline 8. None of the communications provide a clear indication of what term the Tenant is breaching and a statement that the term is a material term of the tenancy agreement.

Given the above, I find the Landlord has failed to meet their burden to prove the grounds for the Notice. I cancel the Notice. The tenancy will continue until ended in accordance with the *Act*.

Conclusion

The Application is granted. The Notice is cancelled. The tenancy will continue 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 *Act*.

Dated: January 18, 2022

Residential Tenancy Branch