



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 as a result of the tenants' Application for Dispute Resolution (application) seeking remedy under the *Residential Tenancy Act* (Act) for the following:

- to cancel a 1 Month Notice to End Tenancy for Cause dated September 24, 2021 (1 Month Notice),
- for an order to compel the landlords to comply with the Act, regulation or tenancy agreement,
- recovery of the cost of the filing fee.

Tenant AB (tenant) and the landlords attended the teleconference hearing. At the start of the hearing, I introduced myself and the participants. The parties were affirmed. The parties were provided with the opportunity to submit documentary evidence prior to this hearing. I have reviewed all oral and documentary evidence before me that met the requirements of the Residential Tenancy Branch (RTB) Rules of Procedure (Rules). However, only the evidence relevant to the issues and findings in this matter are described in this decision.

As neither party raised any concerns regarding the service of documentary evidence or the application, I find that both were served in accordance with the Act.

Preliminary and Procedural Matters

The parties were informed at the start of the hearing that recording of the dispute resolution is prohibited under the RTB Rules of Procedure (Rules) Rule 6.11. The parties were also informed that if any recording devices were being used, they were directed to immediately cease the recording of the hearing. In addition, the parties were informed that if any recording was surreptitiously made and used for any purpose, they

will be referred to the RTB Compliance Enforcement Unit for the purpose of an investigation under the Act. Neither party had any questions about my direction pursuant to RTB Rule 6.11.

In addition, the parties confirmed their respective email addresses at the outset of the hearing and stated that they understood that the decision would be emailed to them.

Issues to be Decided

- Should the 1 Month Notice to End Tenancy for Cause be cancelled?
- If yes, should the landlords be required to comply with the Act, regulation or tenancy agreement?
- If no, should the landlords be granted an order of possession?
- Are the tenants entitled to the recovery of the cost of the filing fee under the Act?

Background and Evidence

A copy of the tenancy agreement was submitted in evidence. A fixed-term tenancy began on August 1, 2021 and is scheduled to revert to a month-to-month tenancy after August 1, 2022. Monthly rent is \$1,400.00 per month and is due on the first day of each month.

The tenant confirmed that they received the 1 Month Notice on September 24, 2021. The tenants filed to dispute the 1 Month Notice on September 25, 2021.

The 1 Month Notice lists two causes as follows:

- ☒ Tenant or a person permitted on the property by the tenant has (check all boxes that apply):
- ☐ 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
- ☒ Breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.

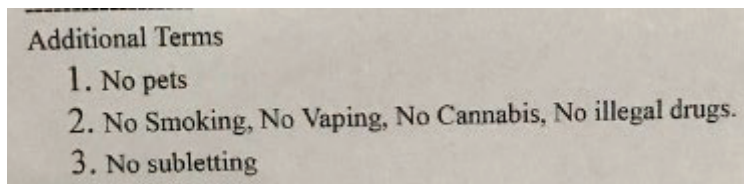
The effective vacancy date indicated on the 1 Month Notice is listed as October 31, 2021, which has passed.

Regarding the second cause, the landlords testified that the tenants have been served two written warning letters regarding smoking marijuana (Weed) in the rental unit. There

was no dispute that the first written notice was given on September 3, 2021 and the second written notice was given dated September 19, 2021. In both notices the tenant confirmed they were cautioned for smoking Weed in the rental unit. The tenant denied smoking in the rental unit but did admit that they smoker cigarettes and are trying to quit but do not smoke in the rental unit. The tenant stated that CW (Second Tenant) does not smoke Weed in the rental unit.

The second tenant, CW (Second Tenant) refused to join the hearing and said “they were too busy” when the tenant attempted to convince the Second Tenant to participate in the hearing. The Second Tenant was in the rental unit during the hearing. The undersigned arbitrator heard the Second Tenant say “I thought were were not calling into that hearing” and the tenant stated that they had not said that to the Second Tenant, so denied knowing what the Second Tenant was talking about. Although the tenant claims the Second Tenant does not smoke Weed in the rental unit, the Second Tenant did not join the hearing to present their own evidence or speak for themselves.

The landlords presented the tenancy agreement addendum that was signed by the tenants, which the tenant confirmed signing and reads in part:



The landlords stated that they would have never rented to the tenants had they known they were both smokers and that the no smoking/no cannabis additional term was a material term of the tenancy.

In addition, the landlords presented two signed witness statements from 2 neighbours, NB and AM (Witness Letters). In both Witness Letters, dated in December 2021 (although one contained what I find to be an obvious error at is said December 2022, which is in the future), confirm that they personally smell Weed in September 2021 before the 1 Month Notice was issued and that the smell was very strong coming from the rental unit. The Witness Letters also support that smoke could be seen coming from the gap under the door between the rental unit and where the landlords live in the home. One of the Witness Letters support that they have seen one of the tenants smoking Weed on their morning dog walk.

Analysis

Based on the documentary evidence and the testimony provided during the hearing, and on the balance of probabilities, I find the following.

Firstly, I find that by tenant CW failing to attend the hearing to dispute the landlords' testimony, that tenant CW does not dispute the allegations in the 1 Month Notice. I am not persuaded by the tenant's testimony stating that CW does not smoke as the tenant also confirmed that they are not speaking with tenant CW and as a result, I afford the tenant's testimony very little weight in terms of the actions of tenant CW.

I afford significant weight to the Witness Letters, which I find supports the 1 Month Notice and the fact that a third party has witnessed both the smell of the marijuana odour and the smoke emanating from the rental unit door. In addition, after reviewing the tenancy agreement addendum and considering the testimony of the landlord, I am satisfied that the no smoking and no cannabis term of the tenancy was a material term and that the landlord has given the tenants a reasonable time to comply with a material term and failed to do so, despite two written warning letters. As a result, I find the landlord has met the burden of proof in providing sufficient evidence to support that at least one tenant has breached a material term of the tenancy that was not corrected after a reasonable time after written notice to do so. Consequently, I dismiss the tenants' application as I find the landlord has met the burden of proof to support that the 1 Month Notice is valid.

In addition, where the tenancy ends for one tenant, it ends for both tenants in a co-tenancy situation, which I find is what applies in this matter. Section 55 of the Act applies and states:

Order of possession for the landlord

55(1) 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.

[emphasis added]

I have reviewed the 1 Month Notice and find that it complies with section 52 of the Act. Therefore, I grant the landlords an order of possession pursuant to section 55 of the Act **effective January 31, 2022 at 1:00 p.m.**, as money has been paid for use and occupancy for January 2022. I find the tenancy ended on the effective vacancy date listed on the 1 Month Notice, October 31, 2021.

I do not grant the filing fee as the tenants' application has no merit and is dismissed in full.

Conclusion

The tenants' application to cancel the 1 Month Notice to End Tenancy for Cause has been dismissed in full and has no merit. The 1 Month Notice issued by the landlords has been upheld.

The landlords have been granted an order of possession effective January 31, 2022 at 1:00 p.m. This order must be served on the tenants and may be enforced in the Supreme Court of British Columbia. The tenants are cautioned that they can be held liable for all costs related to enforcing the order of possession. The filing fee is not granted as indicated above.

This decision will be emailed to the parties. The order of possession will be emailed to the landlords only for service on the tenants.

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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: January 25, 2022

Residential Tenancy Branch