



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **CNC, FFT**

Introduction

This hearing dealt with the Tenant's repeat applications pursuant to the *Residential Tenancy Act* (the "Act") for:

1. Cancellation of the Landlord's One Month Notice to End Tenancy for Cause (the "One Month Notice") pursuant to Sections 47 and 62 of the Act; and,
2. Recovery of the application filing fee pursuant to Section 72 of the Act.

The hearing was conducted via teleconference. The Landlord's Director, RB, Property Manager, MW, and Maintenance Person, LM, attended the hearing at the appointed date and time. The Tenant, RR, also attended the hearing at the appointed date and time. Both parties were each given a full opportunity to be heard, to present affirmed testimony, to call witnesses, and make submissions.

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 were not recording this dispute resolution hearing.

The Landlord served the Tenant with the first One Month Notice on November 8, 2021 by posting the notice on the Tenant's door. The Tenant confirmed receipt of the first One Month Notice. I find the first One Month Notice was served according to Section 88(g) of the Act.

The Landlord served the Tenant with the second One Month Notice on November 15, 2021 by posting the notice on the Tenant's door. The Tenant confirmed receipt of the

second One Month Notice. I find the second One Month Notice was served according to Section 88(g) of the Act.

The Tenant served the Notice of Dispute Resolution Proceeding package for this hearing to the Landlord by posting the notice on the office door on December 5, 2021 (the “NoDRP package”). The Landlord confirmed receiving the NoDRP package which included materials for both One Month Notices. I find that the Landlord was sufficiently served with the documents for this hearing three days after posting, on December 8, 2021, in accordance with Sections 71(2)(c) and 90(c) of the Act.

Issues to be Decided

1. Is the Tenant entitled to cancellation of the Landlord’s first One Month Notice?
2. Is the Tenant entitled to cancellation of the Landlord’s second One Month Notice?
3. If the Tenant is unsuccessful, is the Landlord entitled to an Order of Possession?
4. Is the Tenant entitled to recovery of the application filing fee?

Background and Evidence

I have reviewed all written and oral evidence and submissions before me; however, only the evidence and submissions relevant to the issues and findings in this matter are described in this decision.

The parties confirmed that this tenancy began as a fixed term tenancy on September 1, 2018. At the end of the fixed term, the tenancy continued on a month-to-month basis. The Landlord stated that the original rental started with the Tenant’s sister, then the Tenant joined in on the tenancy on July 7, 2020. Monthly rent is \$2,334.00 payable on the first day of each month. A security deposit of \$1,125.00 was collected at the start of the tenancy and is still held by the Landlord.

The first One Month Notice stated the reason why the Landlord was ending the tenancy was because the Tenant has seriously jeopardized the health or safety or lawful right of another occupant or the Landlord, has put the Landlord’s property at significant risk; and has assigned or sublet the rental unit without the Landlord’s written consent. Further details of the causes were:

On October 29, 2021 at 8:17 pm I received a phone call from a person in tears. She said she had rented a room off of a tenant, [the Tenant] and that he has kicked them out of the building. She was very upset. I asked her if she had anywhere to go for the night and she said no. I called [the Tenant] and he claimed that they only stayed a couple of nights and that she was not telling the truth about him renting a room to her. I asked where his sister [name] was and he said she was visiting in Alberta. I then contacted the Landlord and explained the situation. He drove to the building to meet with the girls and knocked on [the Tenant's] door, suite ##. [The Tenant] did not answer [the Landlord's] knocks until [the Landlord] said he was calling the police. [The Landlord] then picked up the girls and made sure they had a place to stay for the evening.

The effective date of the first One Month Notice was December 31, 2021.

The Landlord's reasons on the second One Month Notice are that the Tenant has seriously jeopardized the health or safety or lawful right of another occupant or the Landlord, and has put the Landlord's property at significant risk. Further details state:

*Landlord was informed by persons in occupancy of the building that marijuana smoking was taking place in the rental unit.
Landlord has had numerous complaints regarding the smell of marijuana.*

The effective date of the second One Month Notice is also December 31, 2021.

The Landlord testified that the Tenant is not allowed to sublet his rental unit, this is specified in the Section 9 of the tenancy agreement which reads:

9. Right to Assign – As per section 34 of the Residential Tenancy Act, new tenants must provide all information requested. Further it is to landlord's satisfaction of the similar quality and number of tenant(s) to be provided. \$300 is charged for a mid -lease ending moving fee (see page 8) No Air B&B or short term furnished or unfurnished sublets will be allowed under any circumstances.

The Landlord provided documentary evidence showing that the Tenant and one international student were named on a tenancy agreement which started on September 29, 2021 and ended on October 29, 2021. The reason why the tenant must vacate is

listed as a 'Sublease Agreement'. The rental amount is listed as \$1,400.00, and a security deposit of \$500.00 was required to be paid on October 1, 2021. There are no signatures at the end of this tenancy agreement; however, one international student wrote in an email to the Landlord that the lease was signed by both of them. Money in the sum of \$1,907.81 CAD was transferred between October 2 to October 5 as payment for the 1 Bed 1 Bath space. Subsequent emails between the Landlord and the Tenant show questions of when the Tenant will be paying the \$500.00 security deposit back to the international student.

Section 3 of the tenancy agreement states that:

3. NO Smoking of any kind is allowed (cigarettes, Electronic cigarettes, marijuana medical or otherwise) pipes, cigars, hookah is not acceptable anywhere on the property, this includes suites, balconies, halls, patios, walkways, elevators, underground, lobby, etc. If the tenant or guests are found smoking anywhere on the property the tenant associated to the incident will be evicted and incur costs as well as releasing fee. Candles/incense burning (even smokeless candles) that result in ceiling/wall/mantel discoloration/damage will be charged to the tenant.

The Landlord provided email evidence from the international student that stayed in the Tenant's rental unit who confirmed that the Tenant does smoke in the suite on a daily basis. She wrote that she regularly smelled marijuana in the rental unit. She also wrote, *"He once apologized about that smell and explained me that he smoked in his personal bathroom while turning the aerator on so that the smell would be reduced in the unit. I also remember him offering me to smoke with him twice, which I declined."*

The Landlord testified that people who live in the building are immunocompromised, asthmatic and otherwise negatively impacted by the smell of smoke. The Landlord said five or six tenants in the building have reported to the Landlord and the Property Manager that they have *"regularly smelled marijuana smoke in our apartment. We have no idea what suite it is coming. The smoke smell is very strong and obvious in our living room, bedroom, bathroom, kitchen and patio. We have smelled the smoke at different times throughout the day and evening."*

Some tenants who live in the suite above the Tenant reported smelling marijuana smoke in 2020, then again in 2021 before the first One Month Notice was served on the Tenant. In 2020, these tenants reported that they have health concerns that are

aggravated by smoke. In October 2021, these tenants reported a strong smell of smoke in their bathroom. On November 8, 2021, these tenants wrote the Landlord and said that the smoke was so bad, it triggered their asthma. They also confirmed that the smoke is most noticeable in the washrooms. On November 14, 2021, these tenants reported that the marijuana smoke was a daily occurrence, that it was stronger than ever, and it triggered their asthma symptoms, sore throats, sore eyes and coughing.

Two of these notices about smelling marijuana smoke were dated in December 2021 after the second One Month Notice was served on the Tenant.

The Landlord, Property Manager and two other employees did an inspection of the Tenant's rental unit on November 29, 2021. The notice to enter given to the Tenant stated the inspection was "*for general use conditions.*" A subsequent email sent from the Landlord states that "*this inspection is due to your Air B&B/subletting and other activities.*" At that inspection, an employee reported a smoke smell in the rental unit.

The Tenant testifies that he did not sublet the rental unit out to the international student. The Tenant never left the residential property while she stayed for the one month duration. The Tenant said she was an occupant or roommate for the time she stayed. The Tenant maintained that he never held himself out to be her Landlord. The Tenant points out that the tenancy agreement allegedly made between the Tenant and the international student submitted into documentary evidence by the Landlord was never signed. The Tenant said the international student's language was good, but because English is not her native language, he insinuated there may be messages lost in translation, he stated 'she's from France'.

Analysis

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim. Where a tenant applies to dispute a notice to end a tenancy issued by a landlord, the onus is on the landlord to prove, on a balance of probabilities, the grounds on which the notice to end tenancy were based.

Section 47 of the Act is the relevant part of the legislation in this application. It states:

Landlord's notice: cause

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*

...

(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) *the tenant purports to assign the tenancy agreement or sublet the rental unit without first obtaining the landlord's written consent as required by section 34 [assignment and subletting];*

...

(3) *A notice under this section must comply with section 52 [form and content of notice to end tenancy].*

(4) *A tenant may dispute a notice under this section by making an application for dispute resolution within 10 days after the date the tenant receives the notice.*

...

The residential property is a no smoking building. The Landlord submits that the Tenant's marijuana smoking in his rental unit is seriously jeopardizing the health or safety or a lawful right or interest of the landlord or another occupant in the residential property. The Landlord's testimony and documentary evidence contains reports from three other tenants, but one tenant who in 2020 reported smelling marijuana smoke coming into their rental unit. This person continued to report the smell of marijuana smoke coming into their rental unit in 2021, and that that smell was triggering their asthma and other negative health impacts. These tenants live right above the Tenant in this matter. An international student who stayed in the Tenant's rental unit for one month noted that smoking marijuana was a daily activity for this Tenant. The Tenant shared with the international student that he smokes his marijuana in his bathroom where he can employ the use of the bathroom fan so the aerator would reduce the smell

in the rental unit. I find that the marijuana smoke is seriously jeopardizing the health and safety of another occupant in the residential property. Based on a balance of probabilities, I find that the Landlord has proven their case that the Tenant has seriously jeopardized the health of another occupant in the residential property. I dismiss the Tenant's application without leave to re-apply.

As the Tenant has failed in his application, I must consider if the Landlord is entitled to an Order of Possession. Section 55(1) of the Act reads as follows:

- 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 an order of possession of the rental unit to the landlord if, at the time scheduled for the hearing,*
- (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 the Landlord's first and second One Month Notices comply with the form and content requirements of Section 52 of the Act. As I have dismissed the Tenant's application, pursuant to Section 55(1) of the Act, I must grant an Order of Possession to the Landlord which will be effective two (2) days after service on the Tenant.

Conclusion

The Landlord is granted an Order of Possession, which will be effective two (2) days after service on the Tenant. The Order of Possession may be filed in and enforced as an Order of the British Columbia Supreme 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: February 08, 2022

Residential Tenancy Branch