



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, LRE, OLC, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the tenants filed under the Residential Tenancy Act (the “Act”), to cancel 1 Month Notice to End Tenancy for Cause, (the “Notice”) issued on January 24, 2022, to suspend or set conditions on the landlord’s right to enter the rental unit, to have the landlord comply with the Act, regulation or tenancy agreement and to recover the cost of the filing fee.

Both parties appeared, gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions at the hearing.

The parties confirmed receipt of all evidence submissions and there were no disputes in relation to review of the evidence submissions.

Rule 2.3 of the Residential Tenancy Branch Rules of Procedure authorizes me to dismiss unrelated disputes contained in a single application. In these circumstances the tenants indicated several matters of dispute on the Application for Dispute Resolution, the most urgent of which is the application to set aside the Notice to end tenancy. I find that not all the claims on this Application for Dispute Resolution are sufficiently related to be determined during these proceedings. I will, therefore, only consider the tenant’s request to set aside the Notice and the tenant’s application to recover the filing fee at these proceedings. The balance of the tenant’s application is dismissed, with leave to re-apply should the tenancy continue.

In a case where a tenant has applied to cancel a Notice, Rule 7.18 of the Residential Tenancy Branch Rules of Procedure require the landlord to provide their evidence submission first, as the landlord has the burden of proving cause sufficient to terminate the tenancy for the reasons given on the Notice.

I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure. I refer only to the relevant facts and issues in this decision.

Issues to be Decided

Should the Notice be cancelled?

Background and Evidence

The tenancy began on August 1, 2018. Rent in the amount of \$1,230.00 was payable on the first of each month. The tenants paid a security deposit of \$600.00. I note that although AW the tenant did not sign the tenancy agreement, all parties agreed that AW is a tenant under the tenancy agreement. Therefore, I confirm that AW is a tenant under the Act.

The parties agreed that the Notice was served on the tenants indicating that the tenants are required to vacate the rental unit on January 28, 2022.

The reason stated in the Notice was that the tenants have:

- significantly interfered with or unreasonably disturbed another occupant or the landlord;
- seriously jeopardized the health safety and lawful right of another occupant or the landlord;
- put the landlord's property at significant risk; and
- Breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.

Counsel for the landlord submits that the landlord and tenants were at a prior hearing held on May 4, 2021, as the landlord had issued a One Month Notice to End tenancy for Cause for smoking. Counsel submits that the One Month Notice to End Tenancy for Cause was cancelled, because the landlord failed to provide sufficient evidence and the Arbitrator warned the tenants in that decision that increased in of this type or any further escalation, may give the landlord sufficient cause to end the tenancy. Filed in evidence is a copy of the decision, dated May 4, 2021.

Counsel for the landlord submits that the tenants are continuing to smoke which is significantly interfering with other occupants' s and the landlord's rights and is a breach of their tenancy agreement and is seriously jeopardizing the health of other occupants

and the landlord. Counsel submits that clause 13 of the additional terms and conditions of the tenancy agreement states, "Absolutely, no smoking in the premises, if you do your tenancy will be terminated right away".

Counsel submits the premises contains a three-level home, which the tenants subject to this hearing rent the two bed basement unit, that the main level rents a room to another occupant and the remainder of the premises is occupied by the landlord.

Counsel submits that the occupant who resided above the tenant from June 1, 2021 to December 31, 2021 end their tenancy because of the ongoing issue of marijuana and cigarette smoke entering their rental unit.

Filed in evidence is a copy of the Notice to Move Out, dated November 30, 2021, which in part reads, I have redacted the telephone number for privacy reasons.

As per Rental Contract I signed on June 1, 2021 my room shared tenancy ends on November 30, 2021. However, as I talked to you, I want to stay here as long as you terminate my room shared tenancy. As you know, since I moved in this room. I experienced that lots of Marijuana and Cigarette smells in my room every day especially in the winter days, it is even worst. Sometimes, I have to open the windows in my bedroom to let the bad smells going out but in contrary the situation gets worst. Because the basement people smoking in their bed rooms and turn on the air conditioning machine 24hour days to let the smells going out and all those smells coming into my bed room through the windows I opened. So, I cannot open my bedroom windows for fresh air at all. I am exposed to second-hand smoking frequently and started to experience respiratory symptoms like shortness of breath and coughing

My decision to move out of the room comes after the ongoing and unreasonable disturbance caused by 2bedroom basement tenants. I do not want to risk my health by living in this kind of situation. I regret to give you the notice to end my room shared tenancy. I appreciate and would like to extend gratitude to you for the pleasant stay, I had enjoyed at your place. If you ever need anymore information regarding this matter, do not hesitate to contact me at [REDACTED]

Thanks

[Reproduced as written]

Counsel for the landlord submits the next occupant who resided above the tenants for a three-month period from January 11, 2022 to March 1, 2022, also had the same issue.

Filed in evidence is a copy of the Statement, dated April 5, 2022, which I have copied the relevant points as follows:

3. I could smell marijuana smoke in my bedroom and ensuite bathroom from the first day that I moved into the room. This smell was coming from the room below mine.
4. My room was directly above a basement suite that was occupied by two men. I could smell the marijuana smell every day. The smoke caused me to have headaches and it was very unpleasant.

[Reproduced as written]

Counsel for the landlord submits that the landlord has had other guest attend the premises and they also had found a heavy smell of marihuana and smoke. Filed in evidence are letters dated December 26, 2021, January 2, 2022, and February 15, 2022.

Counsel for the landlord submits that the landlord has also been keeping a daily log regarding the issue with the tenancy and there are often days where the smell of marihuana and smoke is overwhelming. Filed in evidence is a copy of the landlord's handwritten log.

Counsel for the landlord submits the landlord was also hospitalized for two weeks because they were having nose bleeds and breathing issues, which they believe is linked to the smoking; however, there was no final diagnosis.

Counsel for the landlord submits that the tenants are also interfering with the landlord's rights to reasonable expectation of utility usage. Counsel submits that the tenants will purposely crank the heat up, leave the oven on and then turn the air conditioner on and leave the window open, to purpose increase the utilities for the building.

Counsel for the landlord submits that on August 19, 2021, the tenants gave the landlord a final notice to put the heat on, when at the time it was not necessary. Counsel states on August 22, 2021, the heat was turned on, the oven was on, and the air condition was on and the widow was open. Counsel submits the tenants were not home, and the heat projecting from the rental unit was 41.3 degrees Celsius. Filed in evidence of photographs showing the oven open, and the heating reading of 41.3 degrees Celsius.

The tenant testified that they had received 24 hours notice to enter the rental unit for August 17, 2021, which the landlord was looking for a marihuana grow up. The tenant stated that they were not home at the time; however, a scuffle between the other tenant and landlord occurred and the police attended. The tenant stated that the police at that time found no marihuana grow operation or any evidence of smoking. File in evidence is a police report.

The tenant testified that they do smoke; however, never in the rental unit as they always go outside. The tenant stated that their clothing and body may smell like smoke when they enter the rental unit and this could be the reason for the smell.

The tenant testified that the Notice to Vacate, and the Statement of the previous occupants are only hearsay.

The tenant testified that they have the right to use the heat and often they would use the oven to heat the premises because there was a lack of heating. The tenant stated that it is a violation of their rights to privacy when the landlord took a picture through their window of the oven open when they were not home. The tenant stated they would often leave the oven door open after cooking a meal, as this was the way the other tenant would know that a meal had been cooked.

The tenant testified that there no law that would permit them from not opening the windows as this was to bring fresh air into the basement unit.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

How to end a tenancy is defined in Part 4 of the Act. Section 47(1) of the Act a landlord may end a tenancy by giving notice to end the tenancy.

I have considered all of the written and oral submissions submitted at this hearing; I find that the landlord has provided sufficient evidence to show that the tenants have :

- significantly interfered with or unreasonably disturbed another occupant or the landlord;
- seriously jeopardized the health safety and lawful right of another occupant or the landlord; and
- Breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.

In this matter the issue of smoking has been ongoing. While I accept there was a previous hearing on May 4, 2021, and at the hearing the landlord provided insufficient

evidence and the notice to end tenancy was cancelled. However, the tenants were given a warning by the Arbitrator.

The evidence of the tenants was that they are smokers; however, they do not smoke in the rental unit. Even if that was true, which I find highly unlikely, as I reject the tenant's evidence that the smell of the tenants clothing could be the source of the smoke that is smelled throughout the entire building on the premises, this simply does not have the ring of truth and not reasonable.

Further, even if the tenants are not smoking in the rental unit, they still have an obligation to ensure that the other occupants and the landlord are not significantly interfere with or unreasonably disturbed by their second-hand smoke as this seriously jeopardized the health and lawful right of another occupant and the landlord as they have the right to live in a smoke free environment.

Clearly by the tenancy agreement signed by the tenants , absolutely, no smoking in the premises. I would take this to mean the entire area, land and building to which the tenants have access. I does not restrict this only to the rental unit and clearly there is no designated smoking area, within the premises.

In this case, the I find the Notice to Vacate of the occupant VT, dated November 30, 2021, compelling. This was issued before the Notice was issued. Had the smoking not been the primary reasons for ending the tenancy, the occupant would not have address this in the Notice to Vacate. This is a legal document, under the Act, not hearsay.

I also find the Statement of LD, date April 5, 2022, compelling. They were the occupant who then move into the premises after VT vacating, and they experience the same issues with second hand smoke entering their rental unit. LD was under no obligation to write the statement as they were no longer living in the rental unit or even in the country.

While I accept that on August 17, 2021, when the police attend the rental unit that there was no evidence of smoking; however, the tenant had received 24 hours notice of the inspection.

While I cannot determine the reason the landlord was hospitalized; however, clearly the landlord has health issues, that are being compromised by the tenants' ongoing second-hand smoke. Whether it is coming from inside the tenants' rental unit or within the premises of the property it is seriously impacting their health.

I find the Notice issued has been proven by the landlord and is valid and enforceable. Therefore, I dismiss the tenants' application to cancel the Notice. The tenancy will end in accordance with the Act.

Since I have ended the tenancy for the above, reasons I do not find it necessary to consider the other issues identified in the Notice.

As the landlords have accepted occupancy rent for the month of May 2022, I find it appropriate to extend the effective vacancy date in the Notice to May 31, 2022, pursuant to section 66 of the Act. Therefore, I find the landlord is entitled to an order of possession effective on the above extended vacancy date.

Since I have dismissed the tenants' application, I find that the landlord is entitled to an order of possession effective **May 31, 2022, at 1:00 P.M.** This order must be served on the tenants and may be filed in the Supreme Court. The **tenants are cautioned** that costs of such enforcement are recoverable from the tenants.

Since the tenant were not successful with their application, I find the tenants are not entitled to recover the filing fee from the landlord.

Conclusion

The tenants' application to cancel the Notice, is dismissed.
The landlord is granted an order of possession.

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: May 9, 2022

Residential Tenancy Branch