



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **FFT, CNC**

Introduction

This hearing was convened as a result of the Tenant's Application for Dispute Resolution, made on May 27, 2022 (the "Application"). The Tenant applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

- an order to cancel a one month notice for cause; and
- an order granting the recovery of the filing fee.

The Tenant, the Tenant's witness S.S., the Landlord's Agent L.H. and the Landlord's witness D.S. attended the hearing at the appointed date and time. At the start of the hearing, the parties confirmed service and receipt of their respective Application and documentary evidence packages. As there were no issues raised, I find the above mentioned documents were sufficiently served pursuant to Section 71 of the *Act*.

The parties were given an opportunity to present evidence orally and in written and documentary form, and to make submissions to me. I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

I note that Section 55 of the *Act* requires that when a tenant submits an Application for Dispute Resolution 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 and the landlord has issued a notice to end tenancy that is compliant with the *Act*.

Issue(s) to be Decided

1. Is the Tenant entitled to an order cancelling the One Month Notice dated May 24 2022 (the “One Month Notice”), pursuant to Section 47 of the *Act*?
2. If the Tenant is unsuccessful in cancelling the One Month Notice is the Landlord entitled to an Order of Possession, pursuant to Section 55 of the *Act*?
3. Is the Tenant entitled to the recovery of the filing fee, pursuant to Section 72 of the *Act*?

Background and Evidence

The parties testified that the tenancy began on February 1, 2015. Currently, the Tenant pays rent in the amount of \$1,874.00 to the Landlord which is due on the first day of each month. The Tenant paid a security in the amount of \$812.50 which the Landlord continues to hold. A copy of the tenancy agreement was provided in support.

The Landlord’s Agent stated that she has received a number of complaints from the Tenant’s neighbour beginning in January 2022, which indicate that they can smell cigarette smoke in their unit. The Landlord provided a copy of the written complaints in support. The Landlord stated that the Tenant’s rental unit shares a wall with the neighbouring unit, as such, it must be coming from the Tenant’s rental unit.

The Landlord’s Agent stated that she issued two warning letters to the Tenant on January 10, 2022 and again on March 10, 2022 cautioning against smoking on the rental property. The Landlord’s Agent stated that she has conducted two inspections of the Tenant’s rental unit and did not notice the smell of smoke. The Landlord’s Agent stated that she received a third complaint from the Tenant’s neighbour on May 2, 2022.

The Landlord made their witness available during the hearing. The Landlord’s witness D.S. stated that she is the complainant and resides next to the Tenant. D.S. stated that the Tenant must be smoking inside the rental unit as the smell of smoke is coming through the walls and is impacting the health of D.S. and her family. D.S. stated that it is “definitely not coming from outside”. D.S. stated that aside from health issues, her house smells of smoke, including towels, and linens.

For the above-mentioned reasons, the Landlord’s Agent stated that she served the Tenant with the One Month Notice on May 24, 2022 by posting it to the door of the rental unit. The One Month Notice has an effective vacancy date of June 30, 2022. The Tenant confirmed having received the One Month Notice and disputed it on May 27, 2022. The Landlord’s reasons for ending the tenancy on the One Month Notice are;

The 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 and safety or lawful right of another occupant or the Landlord, and jeopardized a lawful right or interest of another occupant or the landlord.

The 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 wellbeing of another occupant, and jeopardized a lawful right or interest of another occupant or the landlord.

In response, the Tenant stated that she has never smoked in the rental unit as she also has children and would never smoke near them. The Tenant stated that she only smokes outside. The Tenant stated that her neighbour doesn't like her, therefore, is making this allegation out of spite. The Tenant stated that in addition to the Landlord's Agent's attendance to the rental unit on two occasions, the Tenant stated that she has invited the Landlord's Agent to attend the rental unit on other occasions to confirm that she is not smoking inside, however, the Landlord's Agent did not attend.

The Tenant denied having received any formal warning letters about smoking. The Tenant made her witness S.S. available during the hearing who confirmed that she is the Tenant's mother and that the Tenant has never smoked inside the rental unit. S.S. described how careful the Tenant is regarding her smoking and the precautions she takes to ensure the smell of smoke doesn't enter the rental unit.

Analysis

Based on the documentary evidence and oral testimony provided during the hearing, and on a balance of probabilities, I find:

According to Section 47 (1) of the Act, a Landlord may end a tenancy by giving notice to end the tenancy for cause. In the matter before me, the Landlord has the burden of proof to prove that there is sufficient reason to end the tenancy.

The Landlord served the Tenant with the One Month Notice on May 24, 2022. The Tenant confirmed having received the notice. I find the One Month Notice was sufficiently served pursuant to Section 88 of the Act.

I accept that the Landlord's witness D.S. confirmed that there is no issue with the Tenant smoking outside. D.S. stated that the Tenant smokes in her rental unit. I accept that the Landlord has attended the rental unit on two occasions following the complaints and did not smell any smoke in the Tenant's rental unit. Furthermore, I find that the Tenant has extended an invitation to the Landlord's Agent to attend the rental unit on different occasions to further confirm that she is not smoking in the rental unit, however, the Landlord's Agent did not accept. I find that it is more likely than not that if the Tenant

was smoking in her rental unit, it would be apparent to the Landlord's Agent when they attended the rental unit to inspect.

I find that the Landlord has provided insufficient evidence to demonstrate that the Tenant is smoking in her rental unit, which is causing the smell to travel into D.S.'s neighbouring unit. As such, I cancel the One Month Notice, dated May 24, 2022. I order the tenancy to continue until ended in accordance with the Act.

As the Tenant was successful in her Application, I find that she is entitled to the recovery of the filing fee. I find that the Tenant is permitted to deduct \$100.00 from one (1) future rent payment.

Conclusion

The Tenant's application is successful. The One Month Notice issued by the Landlord dated May 24, 2022 is cancelled. The tenancy will continue until ended in accordance with the Act.

The Tenant may deduct \$100 from one (1) future rent payment.

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: September 29, 2022

Residential Tenancy Branch