



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding COQUITLAM KINSMEN HOUSING
SOCIETY and [tenant name suppressed to protect privacy]

DECISION

Dispute Code CNC

Introduction

This hearing was convened as a result of the Tenant's Application for Dispute Resolution made on November 20, 2022. The Tenant applied for an order cancelling a One Month Notice to End Tenancy for Cause dated November 10, 2022 (the One Month Notice), pursuant to the Residential Tenancy Act (the Act).

The tenancy agreement submitted into evidence names FC as a Tenant and identifies IC as his daughter, who is a minor. Therefore, pursuant to section 64 of the Act, I amend the Tenant's application to remove IC as a party to this proceeding.

The Tenant attended the hearing on his own behalf. The Landlord was represented at the hearing by DB, an agent. The Tenant and DB provided affirmed testimony.

The Tenant testified that the Notice of Dispute Resolution Proceeding package was served on the Landlord by registered mail on December 2, 2022. A photograph of an envelope bearing a Canada Post registered mail label and a date-stamp was submitted in support. DB acknowledged receipt on behalf of the Landlord. Therefore, pursuant to section 71 of the Act, I find the above documents were sufficiently served for the purposes of the Act.

On behalf of the Landlord, DB testified that the documentary evidence in response to the Tenant's application was served by registered mail on January 19, 2023. DB provided tracking information in support. The tracking information confirmed service on January 19, 2023. However, the package was not collected and was returned to the Landlord on February 9, 2023. I find I am satisfied the evidence package was served on

the Tenant via registered mail, in accordance with section 88 of the Act. Failure to pick up registered mail is not a way to avoid service. Pursuant to section 90 of the Act, I find the Landlord's documentary evidence is deemed to have been received by the Tenant on January 24, 2023.

The Tenant and DB were given a full 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, and to which I was referred. However, only the evidence relevant to the issues and findings in this matter are described in this decision.

Issues to be Decided

1. Is the Tenant entitled to an order cancelling the One Month Notice?
2. If not, is the Landlord entitled to an order of possession by operation of section 51(1) of the Act?

Background and Evidence

The parties agreed the tenancy began on September 1, 2018. The Tenant's rent is subsidized; he pays \$466.00 per month, which due on the first day of each month. The parties agreed the Tenant paid a security deposit of \$400.00, which the Landlord holds.

On behalf of the Landlord, DB testified the One Month Notice was served on the Tenant by attaching a copy to the door on November 10, 2022. The Tenant acknowledged receipt of the One Month Notice on that date.

The One Month Notice was issued on the basis that the Tenant breached a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so. Specifically, DB testified that the Tenant smokes in the rental unit, which has been an ongoing issue since tenancy began. DB testified that smoking in the rental unit contravenes a Smoke Free Housing Addendum (the SFHA) signed by the Tenant on August 22, 2018. A copy of the SFHA was submitted into evidence. The SFHA acknowledges that failure to comply with the SFHA is considered a breach of a material term of the tenancy agreement.

In support of the One Month Notice, the Landlord submitted a Breach of a Material Term Notification letter dated March 13, 2019. In it, the Tenant was advised that a “strong smell of marijuana” was detected in his rental unit, contrary to the SFHA. The Tenant responded by email on March 14, 2019 by confirming he does not smoke in the rental unit but was drying some marijuana over a heating vent for a friend.

The Landlord also submitted email correspondence from the Tenant dated April 5, 2019, apparently written in response to a complaint that he had been smoking in his rental unit. In the email, the Tenant denied smoking in his unit and suggested the smoke may have originated in another unit.

The Landlord also submitted email correspondence from the Tenant dated October 7, 2019, acknowledging five previous complaints of smoking in the rental unit but agreeing only to one instance. The email also refers to conflict with another tenant.

The Landlord also submitted letters to the Tenant dated January 4 and March 25, 2021. In the letters, the Tenant was advised of a “strong smell of cannabis” in the rental unit, contrary to the SFHA, and requesting a meeting. A letter to the Tenant dated April 1, 2021 confirms a meeting on March 31, 2021 and advises that the letter was his “final warning” before receiving a notice to end tenancy.

DB also testified that she recently attended the rental unit on November 7, 2022. She testified that she attended the Tenant’s rental unit to change a furnace filter. DB testified that when the Tenant opened the door, the smell of smoke “took [her] breath away...eyes were burning.” A written statement provided by DB similarly states there was an “overwhelming” smell of cigarettes emanating from the rental unit.

Further, DB testified that she performed a follow-up inspection of the Tenant’s rental unit on January 18, 2023. Before the inspection, DB walked around the Tenant’s quad and noticed that every window to the Tenant’s unit was open. Roughly 30 minutes after the inspection, DB returned to find all the windows closed. DB suggested this was an attempt to hide the smell of smoke during the inspection.

Finally, DB testified that a tenant who lived beside the Tenant moved out in late summer/early autumn 2022 because her son had health issues related to smoke from the Tenant’s rental unit.

DB stated that the Tenant always has a reason but the behaviour does not change.

In reply, the Tenant testified that he does not smoke in the rental unit. He stated that he occasionally had confrontations with a neighbour and that complaints about cigarette smoke were only made after these confrontations. DB responded by testifying that this was “false.” The Tenant also suggested that he is on DB’s “bad side,” which was described by DB as “ridiculous.” In addition, the Tenant stated that he was previously advised by DB to make frequent complaints to get another tenant evicted and suggested DB has done the same in his situation. DB denied this claim. The Tenant stated that he is not looking for a problem and wants to live in peace but feels singled out. He appreciates his housing and is afraid to lose it.

Analysis

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

Section 47(1)(h) of the Act permits a landlord to take steps to end a tenancy for the reason stated in the One Month Notice.

In this case, I find the Landlord has provided sufficient evidence to uphold the One Month Notice. Specifically, I accept that the Tenant signed the SFHA which states that smoking in the rental unit is a breach of a material term of the tenancy agreement. Although merely stating a term is material is not conclusive, I accept that the SFHA reflects the true intentions of the parties, as evidenced by the Landlord’s consistent approach to the issue. As a result, I find the prohibition against smoking in the rental unit as stated in the SFHA is a material term of the tenancy agreement. I also find that the issue has continued throughout the tenancy, as evidenced by the correspondence to and from the Tenant submitted into evidence.

Considering the above, I find that the Tenant’s application is dismissed without leave to reapply. When a tenant’s application to cancel a notice to end tenancy is dismissed and the notice complies with section 52 of the Act, section 55(1) of the Act requires that I grant the landlord an order of possession. I have reviewed the One Month Notice and find it is signed and dated, gives the address of the rental unit, states the effective date of the notice, states the grounds for ending the tenancy, and is in the approved form. As a result, I find the One Month Notice complies with section 52 of the Act.

Accordingly, I find the Landlord is entitled to an order of possession, which will be effective two (2) days after service on the Tenant.

Conclusion

The Tenant's application is dismissed without leave to reapply.

Pursuant to section 55(1) of the Act, I grant the Landlord an order of possession, which will be effective two days after it is served on the Tenant. The order of possession may be filed in and enforced as an order of the Supreme Court of British Columbia.

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: February 24, 2023

Residential Tenancy Branch