



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

A matter regarding Columbia Property Management
Ltd. and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes **ET, FFL**

Introduction

This is an application by the landlord to end the tenancy early by way of an expedited hearing and seeking;

- an order of possession for the subject residential property pursuant to section 56 of the Act
- for reimbursement of the filing fee pursuant to section 72 of the Act

The landlord attended the hearing represented by agent ZA. The tenant HM attended along with advocates KF and LD. All parties present were given a full opportunity to be heard, to present their sworn testimony and to make submissions under oath.

The hearing was conducted by conference call. The parties were reminded not to record the hearing pursuant to Rule of Procedure 6.11. The parties were affirmed.

I confirmed service of the hearing package with the tenant and no issues arose.

Issue(s) to be Decided

1. Is the landlord entitled to an order ending the tenancy early?
2. Is the landlord entitled to recover the filing fee for this application?

Background and Evidence

The tenancy commenced October 1, 2017 for a fixed term until March 31, 2018 and then on a month to month basis thereafter. Rent is \$650.00 per month due on the first

day of the month. The landlord holds a security deposit of \$325.00 in trust for the tenant. The tenant still occupies the rental unit.

The landlord stated that the tenant is smoking in his unit, which is not permitted in the tenancy agreement and further that the tenant is leaving cigarette butts on the window sill, bedding and carpeted floor. The landlord produced several pictures in evidence showing cigarette butts on the windowsill, bedding, and floor of the tenant's rental unit. The landlord alleges that the pictures show that the bedding is scorched and that the windowsill has damage from cigarettes being extinguished. The landlord also pointed to the aerosol can located near the cigarette butts on the windowsill. The landlord testified that the cigarette butts and smoking in the rental unit pose a significant fire hazard to the rental unit and therefore is seeking to end the tenancy on an expedited basis.

The landlord further stated that they issued a One Month Notice to End Tenancy for Cause on January 17, 2023 with an effective date of February 28, 2023 and the tenant has disputed the notice.

The tenant's advocates spoke on his behalf as he was unable to speak due to medical issues. The tenant's advocates stated that the tenant is not smoking in his rental unit. The tenant collects cigarette butts and rerolls them and that is why there are cigarette butts throughout the rental unit. The tenant's advocate LD stated that she is also his wellness worker and has worked with the tenant for five years. She stated that she meets with the tenant regularly in the rental unit and has never smelled smoke. She stated that while the tenant smokes, he does so outside. She said it is not uncommon for there to be many cigarette butts in the tenant's rental unit. She also stated that the tenant receives home care four times a day, has had that service for years, and the home care workers never notice the smell of cigarette smoke in the tenant's unit. He has also had a cleaner come in every two weeks for several years and the cleaner has never mentioned the smell of cigarette smoke. The tenant had an oxygen tank installed in September 2021 and it would be concerning if there was smoking in the unit for that reason.

The tenant's advocate LD also related a conversation that she stated she had with the site supervisor at the rental property. The site supervisor stated to LD that she has never witnesses the tenant smoking in his rental unit. The site supervisor also stated that the window ledge was burned. LD questioned the tenant about the burns on the window ledge and he advised her that they were there when he moved in.

The landlord stated that the move in inspection report shows that there were no burns on the window ledge when the tenant moved in. The report was not produced in evidence.

Analysis

RTB Rules of Procedure 6.6 states, "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.

Section 56 of the Act allows a landlord to make an application to end a tenancy early for reasons including when a tenant seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant or puts the landlord's property at significant risk.

The landlord produced eight photos in evidence showing cigarette butts located in various places throughout the rental unit. I have closely examined the photos and note that the cigarette butts all have the filters cut off. I further note that the butts are all straight, as opposed to crushed in the way a cigarette butt appears when it is extinguished. I also note that in photograph 5, the cigarette butts do not appear to contain tobacco, and are empty tubes. While the landlord stated that the bedding was scorched, I could not see evidence of scorch marks on the bedding in the photos. Further, what was referred to as burn marks on the window ledge appears to me to be ashes that are smeared in spots. The landlord did not provide any evidence of the smell of cigarette smoke in the tenant's unit.

Further I find the evidence of the tenant's advocates to be compelling. LD visits the tenant's rental unit on a regular basis and she testified she has never smelled cigarette smoke. Further, she related second hand evidence from the site supervisor who has never witnessed the tenant smoking in the rental unit. Additionally, neither the home care workers nor the cleaner who attend the rental unit on a regular basis appear to have noticed the smell of cigarette smoke. I also note the presence of the oxygen tank in the tenant's rental unit, and from that I infer that if anyone had smelled cigarette smoke or witnessed the tenant smoking in the rental unit, the site supervisor or LD would have been notified immediately.

Overall, I find that the evidence both from the landlord and from the tenant is more consistent with the tenant collecting cigarette butts and rerolling them than with the tenant smoking in his rental unit. I find that the landlord has not satisfied their onus to

establish that the tenant's behaviour seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant or puts the landlord's property at significant risk. The landlord's application is dismissed.

As I have dismissed the landlord's application, the landlord is not entitled to recover the filing fee for the application.

Conclusion

The landlord's application is dismissed. The tenancy shall continue until it is ended in accordance with the Act.

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: March 29, 2023

Residential Tenancy Branch