



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes **CNC-MT, MNDCT, RP**

Introduction

This hearing dealt with an application filed by the tenant pursuant the *Residential Tenancy Act* (the "Act") for:

- An order to cancel a 1 Month Notice to End Tenancy for Cause, pursuant to sections 47 and 55;
- Leave to have the application heard after the time to dispute the notice to end tenancy has passed pursuant to section 66;
- A monetary order for damages or compensation pursuant section 67; and
- An order for repairs to be made to the unit, site or property pursuant to section 32.

The tenant and the landlord both attended the hearing. The landlord acknowledged service of the tenant's Notice of Dispute Resolution Proceedings package and the tenant acknowledged service of the landlord's evidence.

The parties were informed at the start of the hearing that recording of the dispute resolution is prohibited under the Rule 6.11 of the Residential Tenancy Branch Rules of Procedure ("Rules") and that if any recording was made without my authorization, the offending party would be referred to the RTB Compliance Enforcement Unit for the purpose of an investigation and potential fine under the Act.

Each party was administered an oath to tell the truth and they both confirmed that they were not recording the hearing.

Preliminary Issue

Residential Tenancy Branch Rule of Procedure 2.3 states that claims made in an Application for Dispute Resolution must be related to each other. Arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply. Rule of Procedure 6.2 allows an arbitrator to decline to hear or dismiss unrelated issues. At the

commencement of the hearing, I determined that the issue of whether to uphold or cancel the landlord's notice to end tenancy was the primary issue before me and that the other issues listed on the tenant's application were not related and would be dismissed with leave to reapply.

Issue(s) to be Decided

Should the notice to end tenancy for cause be upheld or cancelled?

Background and Evidence

At the commencement of the hearing, I advised the parties that in my decision, I would refer to specific documents presented to me during testimony pursuant to rule 7.4. In accordance with rules 3.6, I exercised my authority to determine the relevance, necessity and appropriateness of each party's evidence.

While I have turned my mind to all the documentary evidence, including photographs, diagrams, miscellaneous letters and e-mails, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of each of the parties' respective positions have been recorded and will be addressed in this decision.

The landlord called his first witness MM to give testimony regarding service of the notice to end tenancy. She testified that she served the tenant with the landlord's 1 Month Notice to End Tenancy for Cause via registered mail on January 7, 2023 and provided a tracking number which is recorded on the cover page of this decision. The tenant testified he received it shortly thereafter and his application shows he received it on January 11th. The tenant filed his application to dispute the notice on January 12th and paid for the application within the 10 days of receipt, on January 16th.

A copy of the notice to end tenancy was provided as evidence. The grounds for ending the tenancy state:

1. the tenant or a person permitted on the property by the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord;
2. the tenant or a person permitted on the property by the tenant has seriously jeopardized the health or safety or lawful right of another occupant or the landlord;
3. the tenant or a person permitted on the property by the tenant has put the landlord's property at significant risk;

4. breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so;

Under “details of cause”, the landlord writes:

tenant has breach of a material term of the tenancy agreement, smoking in and around unit. Tenant is harassing other tenants in the building and are fearing for their lives. Police have attended the premises. Warning letter served.

The landlord called a former occupant of the building, JM, who gave the following testimony. After the tenant was served with a warning letter on December 6th, 2022 the tenant continued to smoke close to the property at the front entrance. The smoke disturbed JM, especially when his front windows were open. JM has asthma and he can't smell very well, but it bothered his spouse. JM estimates the tenant smoked every hour or hour and a half for a total of 10 cigarettes daily. The tenant would smoke out on the sidewalk in front of the building, right in front of a hedge in the front yard.

The reason JM moved out of the building is because of the tenant's behaviour. Every time the tenant saw JM's spouse, the tenant would yell at her. This caused JM's spouse to start parking her car 2 blocks away for fear of the tenant confronting her. In October, 2022 JM told the tenant that he is the one who complained about the tenant's smoking and since then the tenant targeted JM's spouse. On December 30th, while checking the lobby for a package, the tenant yelled at JM's spouse, accusing her of stealing his packages. The following week, the tenant made a false domestic dispute call to the police accusing JM and his spouse of fighting. The tenant videotaped the police arrival and the police asked the tenant why he was filming and the tenant responded its his right to do so.

When asked if the tenant had any cross exam questions for JM, the tenant responded that all JM's testimony was factual.

The landlord gave the following testimony. This tenant, like all the others in the building, signed a tenancy agreement which includes a “community guideline” stating it's a smoke free environment. The landlord testified that he has confronted the tenant about his smoking and how it violates the community guideline. The problem has been ongoing and the tenant has been given multiple verbal warnings. On December 6th, the landlord gave the tenant a letter advising him that he's breaching a material term of the tenancy.

In the warning letter, the landlord refers to section 31 of the tenancy agreement community guidelines that states:

Smoking: is not permitted inside or around the premises inside or around the premises as this is a smoke free environment. This includes all vaping products and apparatus, and e-cigarettes, marijuana and tobacco, etc.

Even after serving the breach letter, the tenant continues to smoke outside daily in the front boulevard. This is contrary to the tenancy agreement as it is near the premises. If any of the building's occupants can smell the smoke from their windows, doors or entrances, it's a problem. The tenant told the landlord that he would walk across the street which the landlord agreed, as long as it was not near an entrance or window. This is not happening.

The tenant testified that he wrote the landlord a letter on November 17, 2022 saying he doesn't smoke on the property. He smokes on city property – the sidewalks, not in his house. The landlord said he is not to smoke within 20 feet of the building, so he agreed he would try to smoke across the street, or on the corner. Being an amicable neighbour, he agreed to smoke further away from the premises by either moving across the street, further up, or down towards the corner.

The tenant testified he doesn't smoke on the property and didn't threaten anyone. He and his wife are always on city property when smoking and he has a right to smoke as much as he wants.

Analysis

When a tenant disputes a landlord's notice to end tenancy, the onus to prove the reasons for ending the tenancy falls upon the landlord pursuant to Rule 6.6 of the Residential Tenancy Branch Rules of Procedure. The standard of proof is on a balance of probabilities.

I find that the landlord has successfully proven that the tenant has significantly interfered with or unreasonably disturbed another occupant of the building with his smoking.

I also find the tenant has seriously jeopardized the health or safety or lawful right of another occupant or the landlord.

The Merriam-Webster dictionary defines **significant** as, "*having or likely to have influence or effect, of a noticeably or measurably large amount*". **Unreasonable** means, "*exceeding the bounds of reason or moderation*". The landlord's witness JM testified that the tenant smokes cigarettes approximately 10 times a day outside of JM's unit, on

the hour or every hour and a half. The tenant acknowledged all of the witness JM's testimony.

While I fully accept that the tenant was not smoking on the residential property, (which includes the parcel on which the building and common areas are located) the smoke still has a significantly detrimental affect upon the other occupants of the building. It is also unreasonable for the residents of the "non smoking building" who have all signed the community guidelines to be subjected to second-hand smoke coming from the tenant who chooses to stand on the city owned sidewalk to consume the cigarettes. Their right to the quiet enjoyment of their rental units includes not being exposed to the tenant's cigarette smoke every hour.

Moreover, it is a generally accepted fact that second hand smoke is detrimental to the health of those exposed to it. I find that the constant prolonged exposure to the tenant's second hand smoke presents a serious threat to the health, safety and lawful right of the building's occupants if the tenant were allowed to continue to smoke cigarettes within a close proximity to the building.

For the reasons stated above, I find the landlord has provided sufficient evidence to satisfy me the tenancy should end for the reasons stated in the 1 Month Notice to End Tenancy for Cause. I uphold the landlord's notice to end tenancy.

Section 55(1) states that if a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, the director must grant to the landlord an order of possession of the rental unit if

- 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 have reviewed the notice to end tenancy and I find it complies with the form and content provisions as set out in section 52. As the effective date stated in the notice to end tenancy has passed, the landlord is granted an Order of Possession effective 2 days after service upon the tenant.

Conclusion

I grant an Order of Possession to the landlord effective **2 days after service on the tenant**. Should the tenants or anyone on the premises fail to comply with this Order, this Order may be filed and enforced in 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: April 04, 2023

Residential Tenancy Branch