



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, MNDCT, RR, RP, OLC, FFT

Introduction

This hearing dealt with the tenants' application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- cancellation of the One Month Notice to End Tenancy for Cause, pursuant to section 47;
- a Monetary Order for damage or compensation under the *Act*, pursuant to section 67;
- an Order directing the landlord to comply with the *Act*, regulation or tenancy agreement, pursuant to section 62;
- an Order for regular repairs, pursuant to section 32;
- an Order to reduce rent for repairs, services or facilities agreed upon but not provided, pursuant to section 65; and
- authorization to recover the filing fee for this application from the landlord, pursuant to section 72.

The tenants, landlord agent JB ("agent JB") and landlord agent KL ("agent KL") attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

Both parties were advised that Rule 6.11 of the Residential Tenancy Branch Rules of Procedure prohibits the recording of dispute resolution hearings.

Both parties confirmed their email addresses for service of this Decision.

Preliminary Issue- Service

Both parties agreed that they were served with the other's evidence and agent JB confirmed receipt of the tenant's application for dispute resolution.

Preliminary Issue- Severance

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.

It is my determination that the priority claim regarding the One Month Notice to End Tenancy for Cause (the “Notice”) and the continuation of this tenancy is not sufficiently related to any of the tenants’ other claims to warrant that they be heard together. The parties were given a priority hearing date in order to address the question of the validity of the One Month Notice.

The tenant’s other claims are unrelated in that the basis for them rests largely on facts not germane to the question of whether there are facts which establish the grounds for ending this tenancy as set out in the Notice. I exercise my discretion to dismiss all of the tenants’ claims with leave to reapply except cancellation of the Notice and recovery of the filing fee for this application.

The tenants submitted that their monetary claim for damages and compensation is related to the Notice. Upon review of that claim which pertains to a fine, I find that to render a decision on the monetary claim, I would have to consider different sections of the *Act* and the Regulation that are not applicable to the Notice. I therefore decline to render a decision on the tenants’ monetary claim for damage and compensation as the claims are not sufficiently related.

Issues to be Decided

Are the tenants entitled to cancellation of the Notice?

Is the landlord entitled to an Order of Possession?

Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of both parties, not all details of their respective submissions and arguments are reproduced here. The relevant and important aspects of the tenants’ and landlord’s claims and my findings are set out below.

Both parties agreed to the following facts:

- this tenancy began on September 1, 2021 and is currently ongoing,
- monthly rent in the amount of \$1,003.83 is payable on the first day of each month, and
- a security deposit of \$494.50 was paid by the tenants to the landlord.

A written tenancy agreement was signed by both parties and a copy was submitted for this application.

Both parties agree that the landlord posted the Notice on the tenants' door on January 30, 2023. The tenants testified that they received the Notice on January 30, 2023.

The Notice states the following reason for ending the tenancy:

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

Agent JB testified that the Notice was served on the tenants because they smoke cannabis in the subject rental property contrary to their signed tenancy agreement.

The tenancy agreement states at section 22(1):

22. TENANT'S BIG PROMISES – *BREAKING WILL RESULT IN A NOTICE TO END TENANCY*

...

2) Not smoke any combustible material in the unit, on their patio, in the common areas, or on the residential property. This includes, but is not limited to tobacco, cannabis or any other material producing smoke or vapour.

- a. If the Tenant is found to have smoked in their unit, a MANDATORY repainting of the entire unit will be required and will be charged back to the Tenant.

The tenants initialled the above section of the tenancy agreement.

Agent JB testified that the tenants were given numerous warnings about smoking in the subject rental property but they have refused to comply. Various warnings were entered into evidence including an email warning dated January 27, 2023 which states:

Unfortunately, it has become pretty evident that despite previous email and in person conversations, smoking has continued within the home. Therefore a violation has been sent and the fine of \$50.00 has been applied.

Let me be clear when I say I am NOT saying you cannot smoke or vape. I AM saying that you CANNOT smoke or vape in the suite or in any part of the building. Smoking can ONLY be done in the designated smoking area. Doing so is a violation of your tenancy agreement and if it continues an additional fine of \$250.00 will be applied as well as a Notice to Vacate will be posted to your door. This can only be done in the designated smoking area.

Please refer to Section 22.2 of your tenancy agreement TENANT'S BIG PROMISES - BREAKING WILL RESULT IN A NOTICE TO END TENANCY (attached)

The tenant(s) Promise to:

Not smoke any combustible material in the unit, on their patio, in the common areas, or on the residential property. This includes, but is not limited to tobacco, cannabis, or any other material producing smoke or vapour

If a tenant is found to have smoked within their unit, a MANDATORY repainting of the entire unit will be required and will be charged back to the Tenant

As of right now you are breaking your tenancy agreement and further instances will lead to another fine, full repaint of your suite at your expense, and a Notice to End Tenancy will be posted to your door.

Tenant ML testified that he has been smoking cannabis in the subject rental property for the duration of the tenancy and there was no issue until March of 2022. Tenant ML testified that he has a health condition and has been prescribed cannabis for that condition. The tenant entered into evidence a federal registration document which permits tenant ML to use 3 grams of dried marihuana per day. The registration document is valid from October 27, 2022 to October 27, 2023.

The tenants testified that since the tenant has a medical condition, under the British Columbia Human Rights Code (BCHRC), the landlord is required to accommodate the tenants' consumption of marijuana in the subject property.

Agent JB testified that the tenant is permitted to smoke marijuana at the three designated smoking sites located outside of the subject rental property. Agent JB

testified that there is nothing in the registration document which authorizes the tenants to override section 22 of the tenancy agreement.

Tenant ML testified that he does not want to smoke outside because being seen smoking marijuana could tarnish his image and it's cold in the winter. Tenant ML testified that he did not want to bring down the property value by smoking outside.

Analysis

I find that the Notice was served on the tenants in accordance with section 88 of the *Act* on January 30, 2023. Upon review of the Notice I find that it complies with the section 52 of the *Act*.

Section 47(1)(h) of the *Act* states that a landlord may end a tenancy by giving notice to end the tenancy if the tenant has failed to comply with a material term, and has not corrected the situation within a reasonable time after the landlord gives written notice to do so.

Residential Tenancy Policy Guideline #8 states in part:

To end a tenancy agreement for breach of a material term the party alleging a breach – whether landlord or tenant – must inform the other party in writing:

- that there is a problem;
- that they believe the problem is a breach of a material term of the tenancy agreement;
- that the problem must be fixed by a deadline included in the letter, and that the deadline be reasonable; and
- that if the problem is not fixed by the deadline, the party will end the tenancy.

Where a party gives written notice ending a tenancy agreement on the basis that the other has breached a material term of the tenancy agreement, and a dispute arises as a result of this action, the party alleging the breach bears the burden of proof.

I find that through the many warning emails and in particular the January 27, 2023 warning email, the landlord clearly informed the tenants that smoking in the subject rental property is a problem that is a breach of a material term and that if the smoking is

not immediately stopped, a notice to end tenancy will be served. I find that immediate cessation was a reasonable timeline as the tenants were provided with reasonable spaces to smoke on the grounds of the subject rental building. I find that the tenants' preference to smoke inside does not permit him to do so.

The tenants signed the tenancy agreement and initialed the no smoking section. The tenants are bound by the terms of the tenancy agreement. I find that the tenants have not proved, on a balance of probabilities, that they were permitted under the BCHRC to smoke in their unit, contrary to the terms of their tenancy agreement. The tenants did not set out what section of the BCHRC they were relying on and did not provide any case law on this point. I note that I have no jurisdiction to make findings under the BCHRC.

Pursuant to my above findings, I uphold the Notice and issue the landlord an Order of Possession in accordance with section 55 of the *Act* for May 31, 2023.

As the tenants were not successful in this application for dispute resolution, I find that they are not entitled to recover the \$100.00 filing fee from the landlord, pursuant to section 72 of the *Act*.

Conclusion

Pursuant to section 55 of the *Act*, I grant an Order of Possession to the landlord effective at **1:00 p.m. on May 31, 2023**, which should be served on the tenants. Should the tenants fail to comply with this Order, this Order may be filed 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: May 25, 2023

Residential Tenancy Branch