



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

A matter regarding KIN VILLAGE
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes GNR CNC
OPC-DR

Introduction

This hearing was convened by way of conference call concerning applications made by the tenant and by the landlord. The tenant had applied for an order cancelling a notice to end the tenancy for unpaid rent or utilities, which was amended to dispute a notice to end the tenancy for cause. The landlord has applied by way of the Direct Request process for an order of possession for cause, which was referred to this participatory hearing joined to be heard with the tenant's application.

The tenant attended the hearing with the tenant's son assisting, who did not take part in the hearing. An agent for the landlord also attended, accompanied by another person who observed only and did not take part in the hearing.

The tenant and the landlord's agent each gave affirmed testimony and the parties were given the opportunity to question each other and to give submissions.

No issues with respect to service or delivery of documents or evidence were raised by the parties, and all evidence has been reviewed and is considered in this Decision.

Issue(s) to be Decided

- Has the landlord established that the One Month Notice to End Tenancy For Cause was issued in accordance with the *Residential Tenancy Act*, specifically with respect to the reasons for issuing it?

Background and Evidence

The landlord's agent testified that this month-to-month tenancy began on August 16, 2018 and the tenant still resides in the rental unit. Rent is subsidized, and the tenant's

share is currently \$559.00 payable on the 1st day of each month, and there are no rental arrears. At the outset of the tenancy the landlord collected a security deposit from the tenant in the amount of \$230.00 which is still held in trust by the landlord, and no pet damage deposit was collected. The rental unit is a 1 bedroom subsidized apartment in a complex containing 3 storeys and 86 units. The landlord's agent does not reside on the rental property.

The landlord's agent further testified that on May 7, 2024 the landlord's agent witnessed another agent of the landlord serve the tenant with a One Month notice to End Tenancy For Cause (the Notice) by personally handing it to the tenant. A copy of the Notice has been provided for this hearing and it is dated May 7, 2024 and contains an effective date of vacancy of June 30, 2024. The reason for issuing it states: Breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.

Continued smoking by the tenant and her family member inside the apartment is the breach. The landlord has received complaints ever since the tenant moved in. Multiple warning letters were sent to the tenant as well as verbal warnings. The complaints also include marihuana smoke. The tenant's son also now lives with the tenant and they both smoke. There is a designated smoking area.

Paragraph 31 of the tenancy agreement states:

31. SMOKING

By executing this tenancy agreement, the tenant acknowledges and agrees that smoking in the rental unit or in any areas of the residential building, including, without limitation, corridors, elevators, garages, patios or balconies, is strictly prohibited, and the tenant hereby covenants to not smoke in the rental unit or in any of the aforementioned areas of the residential building, except outside areas designated by the landlord for smoking.

The tenant testified that there was a smoke shack outside the exit door, where the tenant smoked. That was taken away during construction, and now the tenant would have to walk to the next building over and the tenant's movement is limited due to a bad knee.

On May 26, 2024 the tenant started a stop-smoking method, and hasn't smoked since that day.

The tenant disputes smoking on June 21, 2024 when the letter was issued, only another person. The tenant emailed the landlord after receiving that letter and advised that it

was not the tenant who was smoking. The tenant was just sitting there playing a game on her phone.

Analysis

Firstly, where a tenant disputes a notice to end a tenancy given by a landlord, the onus is on the landlord to establish that it was given in accordance with the *Residential Tenancy Act*, which can include the reason(s) for issuing it. I have reviewed the One Month Notice to End Tenancy For Cause (the Notice), and I find that it is in the approved form and contains information required by the *Act*. The reason for issuing it is in dispute.

The landlord has provided a copy of a letter given to the tenant dated June 21, 2024. However, I do not find that to be relevant. The landlord must demonstrate that the landlord had cause to issue the Notice at the time it was issued, not issues that arose several weeks later.

To end a tenancy agreement for breach of a material term the party alleging a breach 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.

I have reviewed all of the landlord's evidence, including the written warning letters to the tenant. The letter dated April 12, 2024 states that smoking and vaping is strictly prohibited, although the tenancy agreement does not speak to vaping. However, the letter also states that the tenant acknowledges and agrees that smoking is strictly prohibited. It also states that as a result of the non-compliance, the letter serves as a final warning and there will be no further warning letters. "If another complaint is received after this final warning has been issued the eviction notice will be automatically issued thereafter." That letter, and the one dated July 7, 2023 both state that smoking is permitted in designated areas only, and if the tenant does not comply, the landlord will have no other recourse but to end the tenancy for cause.

The tenant does not dispute that she smoked in areas other than the designated smoking areas, but disputes smoking on June 21, 2024. The tenant testified that she has stopped smoking, but that does not negate the notice to end the tenancy; it is not

up to me to give the tenant another chance, but to make a determination on whether or not the landlord has established the breach of a material term of the tenancy agreement.

Considering the letters written to the tenant, I find that the smoking paragraph in the tenancy agreement is a material term, which has been breached by the tenant even after receiving written notice that the breach would affect the tenancy.

In the circumstances and considering the evidence, I find that the landlord has complied with the *Act* in issuing the Notice. Therefore, I dismiss the tenant's application to cancel it.

The law states that where I dismiss a tenant's application to cancel a notice to end a tenancy given by a landlord, I must grant an order of possession in favour of the landlord, so long as the Notice given is in the approved form. Having found that it is in the approved form, I grant an order of possession in favour of the landlord.

At the end of the hearing, the landlord indicated that if I uphold the Notice, the landlord would be content with an effective date of vacancy of August 31, 2024, and I so order.

The tenant must be served with the order of possession which may be filed for enforcement in the Supreme Court of British Columbia.

Conclusion

For the reasons set out above, the tenant's application is hereby dismissed without leave to reapply.

I hereby grant an order of possession in favour of the landlord effective at 1:00 p.m. on August 31, 2024.

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: July 17, 2024

Residential Tenancy Branch