



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC

Introduction

This hearing was convened on an application made by the tenant and received on July 3, 2013 seeking to have set aside a one-month Notice to End Tenancy for cause served in person on June 21, 2013 and setting an end of tenancy date of July 31, 2013.

Issue(s) to be Decided

Should the Notice to End Tenancy be set aside or upheld?

Background and Evidence

This tenancy began on April 15, 2012 and was underway when the present landlord took possession of the property in July 2012. Rent is currently \$530 per month and the landlord holds a security deposit of \$250 paid at the beginning of the tenancy.

During the hearing, the landlord gave evidence that he had served the Notice to End Tenancy after the tenant had been playing loud music the night before, a weeknight, which interfered with his family, a wife and children, getting sufficient rest.

The letter also stated that, despite repeated warnings, the tenant had continued to breach the rental agreement by smoking on the property. The tenant stated that he had not smoked on the property since receiving a warning letter dated December 10, 2012 in which the landlord implored the tenant to stop smoking on the property as it had resulted in smoking odours in his upstairs living unit and was a detriment to his family's health.

The tenant's witness gave evidence that she attends the rental unit frequently to visit with the tenant and that to her knowledge, he had always left the property to smoke since being requested to do so by the landlord.

The landlord's witness who lives in the rental building verified the landlord's claim that the tenant had continued to smoke in, or in close proximity to the rental unit and had resulted in tobacco odours in the building.

The tenant stated that the landlord simply wished to regain occupancy of the rental unit and was trying to avoid having to grant the one-month's free rent to which the tenant would be entitled if served with a two-month Notice to End Tenancy for landlord use under section 49 of the *Act*.

Analysis

Section 47(1)(d)(i) provides that a landlord may issue a one-month Notice to End Tenancy in circumstances in which a tenant has, "significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property," one of the causes cited on the Notice.

In the present matter, I find the evidence of the landlord to be decisively more credible than that of the tenant. Therefore, I found the Notice to End Tenancy of June 21, 2013 to be lawful and valid and declined to set it aside as requested by the tenant.

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

On hearing that determination, the landlord requested and I find he is entitled to an Order of Possession under section 55(1) of the *Act* which compels the issuance of the order on the landlord's verbal request when a tenant's application to set a notice to end tenancy aside is dismissed and the notice is upheld.

The Order of Possession will take effect two days from service of it on the tenant.

The tenant taunted the landlord noting that he would now be required to pay bailiff fees.

Conclusion

The tenant's application is dismissed without leave to reapply and the Notice to End Tenancy of June 21, 2013 is upheld.

The landlord's copy of this decision is accompanied by an Order of Possession, enforceable through the Supreme Court of British Columbia to take two days from service.

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: August 02, 2013

Residential Tenancy Branch

