Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Westwood Apartments Ltd.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes:

CNC, OLC

Introduction

The tenant applied to cancel a 1 month Notice ending tenancy for cause and an Order the landlord comply with the Act.

Both parties were present at the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained, evidence was reviewed and the parties were provided with an opportunity to ask questions about the hearing process. They were provided with the opportunity to submit documentary evidence prior to this hearing, all of which has been reviewed, to present affirmed oral testimony and to make submissions during the hearing. I have considered all of the relevant evidence and testimony provided.

Issue(s) to be Decided

Should the 1 month Notice ending tenancy for cause issued on September 27, 2013 be cancelled?

Should the landlord be Ordered to comply with the Act?

Background and Evidence

The tenancy commenced on August 1, 2011, rent is due on the 1st day of each month. A copy of the signed tenancy agreement was supplied as evidence. Clause 43 of the tenancy agreement was not signed or initialed by the parties; this clause set out terms related to smoking in the rental unit. The next clause, prohibiting pets was initialed by each party. The landlord stated that on the tenant's application to rent he has said he was not a smoker.

The tenant lives on the 1st floor of a 42 unit, 7 floor building.

The landlord and the tenant agreed that a 1 month Notice to end tenancy for cause was issued on September 27, 2013. On October 1, 2013 the tenant applied to cancel the Notice.

The reasons stated on the Notice to end tenancy were:

- that the tenant or a person permitted on the property by the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord; and
- the tenant has breached a material term of the tenancy that was not corrected within a reasonable time.

The landlord testified that in February 2012 the previous building manager spoke to the tenant in relation to reports that the tenant was smoking marijuana in his rental unit. The landlord said that other occupants were upset at this activity and that there were occupants who indicated they would vacate their units if this continued.

In April 2013 the current building manager began to reside in a unit adjoining the tenant's unit. Between April and June 2013 occupants of units 404, 703, 104 and 101 all complained about the marijuana smoke and threatened to vacate. Those individuals were afraid to place their concerns in writing; the concerns that had been expressed were not specifically discussed with the tenant.

On July 15, 2013 the tenant was given a letter which explained that the smell of marijuana smoke had resulted in complaints as it was affecting other tenants in surrounding units. The letter explained that other occupants found the smell to be adverse and that is caused a hazard to their health and enjoyment. The tenant was warned that other complaints could result in the tenancy ending. A copy of the letter was supplied as evidence.

There was no evidence before me of any investigation of specific complaints made by occupants, but the building manager said that she did speak with the tenant and attempted to engage with the tenant. The building manager said that when she attempted to rent unit 102 out in June 2013 the tenant would open the door to his unit and she could smell marijuana coming from the unit. The manager told the tenant that he needed more ventilation; she tried to be delicate and to tread lightly with the tenant.

The building manager said that 1 person moved out of the ground floor and mentioned the tenant's smoking; another person who moved out had joked about the problem. Another occupant of the ground floor was a young international student who did not wish to place her concerns in writing.

The landlord said that after posting the July 15 2013 letter to the tenant's door he approached her 4 times on that date; on all occasions denying he had smoked in his

unit. The landlord said the tenant indicated his friends had “blazed” in his unit; a term the landlord took as a reference to smoking.

On July 15, 2013 the tenant gave the landlord a letter, in response to the warning issued. The tenant said that he had never smoked in his unit and that there was more than 1 suite in the building where occupants smoked. The tenant pointed out he was allowed to smoke medical marijuana, outside, for medical purposes and that he has had a clean rental record.

The landlord stated that for the next 4 weeks there were no issues related to the smell of marijuana, but that the problem then re-emerged.

The landlord supplied an October 25, 2013 letter written by an occupant of the 7th floor of the building in support of the Notice. This occupant alleged the tenant has approached him asking if he smokes and that he has been told by “multiple neighbours” that the tenant is selling drugs. The occupant alleged that he has smelled marijuana coming from the tenant’s unit on multiple occasions and that he was concerned about the possibility of a fire. The building manager said that this occupant is elderly and comes to her unit, next to the tenant’s unit, on a daily basis.

The building manager’s father wrote an October 15, 2013 letter which was supplied as evidence in support of the Notice; he does not reside in the building. The manager’s father indicated that the tenant has “pounded on the door, demanded attention and walked in uninvited. He was partially undressed.” The tenant was asked to leave and he did; a date of this alleged event was not supplied. The manager’s father stated he could smell marijuana on the tenant, that he dressed inappropriately and that he leaves the smell of marijuana lingering in common areas. He further alleged that the tenant disrupts the quiet enjoyment of other tenants and interrupts the showing of suites.

The building manager said that at one point the tenant came to her door; he was not wearing a shirt, he was in boxer shorts and his fly was undone. She did not address her discomfort, but attempted to quickly end the interaction. No further incidents of this nature were reported.

The landlord acknowledged that at least 1 other person in the building has a medical marijuana certificate, but they do not cause problems.

The landlord said they had been in the unit twice since July 2013 and once in October; the landlord did not see any evidence of marijuana smoking during these entries.

The tenant supplied sixteen letters signed by other occupants of the building, all attesting to the absence of any negative encounters or issues with the tenant and that they have never detected smoke odours emanating from the tenant’s unit.

The landlord said that the tenant had coerced at least 1 occupant into signing the letters; that he repeatedly went to occupants’ doors until they agreed to sign and could

testify to that. The landlord stated that she did not believe the occupant would be able to prove coercion and they were not called as a witness. The tenant objected to this submission and denied he had harassed or coerced anyone. The tenant said he approached people in the common areas of the building.

The tenant supplied evidence that 8 years ago he was in a vehicle accident that resulted in multiple injuries and disability. The tenant provided a copy of a Health Canada *Authorization to Possess Dried Marijuana for Medical Purposes* certificate. This certificate expired on October 25, 2013.

The tenant acknowledged that he consumes marijuana outside of his unit and that a previous manager, Dan, had told him he could smoke on the roof of the building. The tenant vehemently denied smoking in his unit or allowing friends to smoke in his unit. The tenant said that other people in the building smoke and that he believes the landlord is unnecessarily focusing on him. He confirmed that the building manager had seen him on the roof smoking.

During the hearing the tenant did not raise any issues related to any Order that is required. I note that the tenants' written submission indicated that on October 20, 2013 he asked the landlord for a new laundry card as his had broken. On October 22, 2013 the landlord responded to the tenant indicating they would not supply him with another card.

The tenant's written submission also indicated that the landlord is disconnecting the tenant's entry phone. An October 10, 203 letter from the tenant's mother to the landlord indicated that the front door buzzer for the tenant is ringing to her cell phone. The tenant had submitted a maintenance request and needed the repair as it was an inconvenience and could place him at risk, due to his disability.

Analysis

After considering all of the written and oral evidence submitted at this hearing, I find that the landlord has provided insufficient evidence to show that the tenancy should for the reasons indicated on the Notice.

First, I will address the matter of smoking and a breach of a material term of the tenancy agreement. The tenant resides in a rental unit that does not prohibit smoking. The clause setting prohibitions for smoking was not checked or initialed by the parties.

Section 6(3) of the Act provides:

> *3) A term of a tenancy agreement is not enforceable if*
>
> > *(a) the term is inconsistent with this Act or the regulations,*
> > *(b) the term is unconscionable, or*

> *(c) the term is not expressed in a manner that clearly communicates the rights and obligations under it.*

As the tenancy agreement did not communicate any obligation that the unit was to be smoke-free, I find that the tenant is not prohibited from smoking in his unit or on the residential property. Further, while there is suspicion the tenant is smoking in his unit there was an absence of any evidence that the tenant or his guests are in fact smoking in the unit. Even if the tenant were to smoke in his unit, he would not be in breach of any material term of the tenancy agreement.

I have then considered the allegation that the tenant is smoking marijuana and smelling of marijuana. There is no doubt that the tenant might smell of marijuana; up until October 25, 2013 he possessed Health Canada authorization to possess and use marijuana. If the smell of marijuana remains on the tenant, that can be of no concern to others. The tenant was free to use marijuana and from the evidence before me I find he was not legally prohibited from using marijuana.

I have then considered whether the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord and find, on the balance of probabilities, that there is an absence of evidence supporting this allegation. The occupant who lives on the 7th floor can hardly be said to be disturbed; he lives a considerable distance from the tenant. That occupants' concern in relation to a possible fire could be said to be equally based on the smoking of any product in the building. The building is not smoke-free.

The balance of the allegations made, that occupants were threatening to vacate, were not supported by any independent evidence. The 1 letter of warning issued on July 15, 2013 was followed by the Notice ending tenancy issued on September 27, 2013. No other warning or notice appears to have been given to the tenant and there was an absence of evidence of disturbance or interference, outside of others disapproving of the tenant's apparent use of marijuana.

Where one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof has not met the onus to prove their version of events. The landlord had the burden of proving that the tenant has caused an unreasonable disturbance and that he has significantly interfered with others and the landlord has failed to do so. Other occupants may well have strong feelings about the tenant and object to the smoking of marijuana, but when ending a tenancy the landlord must bring forward evidence that supports the allegations of significant interference and unreasonable disturbance; disapproval by others does not meet this burden.

I considered the landlord's submission that the tenant has dressed inappropriately; this appears to have occurred on 1 occasion and no repeat of that behaviour has occurred.

Therefore, I find that the Notice ending tenancy issued on September 27, 2013 is of no force and effect. The tenancy will continue until it is ended in accordance with the Act.

In relation to the issue of access to the laundry; this matter was not discussed during the hearing. However, if laundry is a service provided as part of the tenancy and included with the rent, the landlord must ensure that the tenant has access to that service by providing him with a key or pass-card.

Again, if the entry phone is a service that is required so that guests can gain entry the landlord has a responsibility to maintain and repair that service. There was no discussion in relation to allegations the landlord is tampering with the connection of this service; however, the use of an entry phone should not be impeded and any required repair should be made within a reasonable period of time.

If the tenant believes that any services are being denied, written notice should be provided to the landlord. The tenant has leave to submit an application requesting repair and compensation for the loss of any service or facility that is included with the rent.

Conclusion

I have determined that the landlord's have submitted insufficient evidence to establish that they have grounds to end this tenancy for the reasons indicated on the Notice ending tenancy issued on September 27, 2013.

The tenancy will 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: November 08, 2013

Residential Tenancy Branch