



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding BONAVISTA MANAGEMENT LTD
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes

CNC

Introduction

This teleconference hearing was scheduled in response to an application by the Tenant under the *Residential Tenancy Act* (the “Act”) to cancel a One Month Notice to End Tenancy for Cause (the “One Month Notice”).

Three agents for the Landlord (the “Landlord”) were present for the teleconference hearing, as was the Tenant and an agent for the Tenant who also presented testimony as a witness.

The parties confirmed that the Notice of Dispute Resolution Proceeding package and copies of each party’s evidence was served in accordance with Sections 88 and 89 of the *Act*.

All parties were affirmed to be truthful in their testimony and were provided with the opportunity to present evidence, make submissions and question the other party.

I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this decision.

Issues to be Decided

Should the One Month Notice to End Tenancy for Cause be cancelled?

If the One Month Notice to End Tenancy for Cause is upheld, is the Landlord entitled to an Order of Possession?

Background and Evidence

The parties were in agreement as to the details of the tenancy. The tenancy began on June 1, 2007. Monthly rent is currently \$1,145.00 with a \$60.00 monthly charge for parking, for a total monthly payment of \$1,205.00. Rent is due on the first day of each month. A security deposit of \$417.50 was paid at the outset of the tenancy.

The tenancy agreement was submitted into evidence, along with a recent notice of rent increase which confirm the details as stated by the parties.

The Landlord provided testimony that they have received many complaints since 2012 regarding the Tenant smoking marijuana in her rental unit. The Landlord stated that the other residents have complained about smoke coming through the vents and doors and into the hallways and their rental units. The Landlord stated that this is impacting the other tenants' right to quiet enjoyment of their rental units. The Landlord noted that the police have been called twice, and both times the Tenant refused to open her door.

The Landlord testified that the issues with the smell of marijuana smoke in the rental building have been increasingly getting worse since May 2018. They stated that the building is a non-smoking building as stated in the tenancy agreement. A tenancy addendum regarding the no smoking policy, signed by the Tenant and Landlord on October 20, 2018, was also submitted into evidence.

The Landlord testified that many letters have been provided to the Tenant, including the most recent letter that stated that a One Month Notice would be served if the Tenant did not comply with the no smoking policy. The Landlord's evidence included the following:

- A letter to the Tenant from the Landlord dated June 11, 2012 stating that odours from marijuana were coming from the Tenant's unit. The letter stated that if any further complaints were received, the Tenant may be served with a One Month Notice
- A letter to the Tenant from the Landlord dated January 18, 2018 stating that marijuana odours had been noticed from the Tenant's unit and if any further complaints are received, a One Month Notice may be served. The letter also stated a date in which the Landlord would be attending the home for an inspection
- An inspection report from the building manager, dated January 26, 2018, noting that the unit was clean, and that one dirty ashtray was seen
- A letter from the Landlord to the Tenant, dated June 13, 2018, stating that they continue to receive multiple complaints about the odour of marijuana smoke coming from the Tenant's rental unit
- A letter from a resident of the rental building to the Landlord, dated August 8, 2018, noting four dates and times that the resident could smell marijuana smoke in their unit
- A letter from building residents to the Landlord, dated August 14, 2018, which states that they previously lived on the same floor as the Tenant, but requested to be moved two floors up due to the marijuana smell that came into their apartment from the Tenant's unit. The letter also notes that they have smelled marijuana when in the elevator with the Tenant
- A letter from another resident in the building to the Landlord, dated October 4, 2018, which outlines 21 dates and times in which the resident could smell marijuana in her rental unit, or in the hallways coming from the Tenant's rental unit
- A petition signed by 8 residents of the rental building, signed between August 25, 2018 and September 19, 2018, stating that they regularly smell marijuana smoke from the Tenant's unit and would like the Landlord to enforce the no smoking policy
- Notices from the Landlord to all residents of the building reminding residents of the no-smoking policy, dated December 15, 2017, February 16, 2018, and May 21, 2018

The Landlord testified that the letters to the Tenant were served to her in person.

The Tenant submitted in part the following evidence:

- A letter dated October 6, 2018 from the Tenant's employer, stating that he has known the Tenant for over 15 years and is aware that she does not smoke. The letter also states that the Tenant has an aversion to smoke, and that he believes the Tenant has been falsely accused

The Tenant provided testimony that she did not receive any of the warning letters from the Landlord, and only received the One Month Notice. She stated that had she received the previous letters, she would have spoken to the Landlord, as she did the day after receiving the One Month Notice.

The Tenant further testified that she has never smoked cigarettes or marijuana, and that no guests have smoked in the rental unit either. She stated that she has never had an ashtray in her home, and never had the police visit.

Both the Tenant and the Tenant's witness stated that this issue is about the problem with the ventilation in the building, as there are constantly various smells in the hallways and coming into the rental units. The Tenant was in agreement that there is a marijuana smell in the building, but states that it is not coming from her rental unit.

The Tenant confirmed that she received the general notices that were provided to all residents of the building confirming that there was no smoking in the building, but did not receive any specific letters to her from the Landlord.

The witness provided testimony that the Tenant had previously lived on his property for a number of years and that he had never experienced any issues. He stated that he even offered her employment once he got to know her. The witness also stated that there was a 6-year gap between the issues being brought up by the Landlord and that had the Tenant been smoking marijuana during this time, her rental unit would smell, which it does not.

The witness for the Tenant also testified that the Tenant was working for him on a number of the occasions outlined in the letters from the other tenants stating that they smelled marijuana smoke from the Tenant's rental unit.

The Landlord testified that they provided many letters of warning, and the issue was never resolved. They stated that since serving the Tenant with the One Month Notice, they have not had any complaints of odour from marijuana smoke. However, the Landlord stated that they have concerns about whether the issue will become a problem again in the near future.

Analysis

I refer to Section 47(4) of the *Act* which states that a tenant has 10 days in which to dispute a One Month Notice. As the Tenant received the notice on October 5, 2018, and applied to

dispute the notice on October 9, 2018, I find that she applied within the timeframe provided by the *Act*.

Therefore, the Tenant applied in time to dispute the One Month Notice. When a tenant applies to dispute a notice to end tenancy, the onus is on the landlord to prove, on a balance of probabilities, that the reasons for the notice are valid. That is, that the Landlord must prove that it is more likely than not that the events that led to the issuance of the One Month Notice occurred as stated.

The Landlord submitted two letters from the Landlord, two letters from other residents of the building, and a petition signed by eight residents of the building. The letters and the petition all noted that odours of marijuana smoke are coming from the Tenant's rental unit.

I also accept the evidence before me that the Tenant resides in a non-smoking rental building, as stated in the tenancy agreement, the notices to all residents of the building, and the tenancy agreement addendum. The notices to the building are clear that the non-smoking policy applies to smoke of any kind, not just tobacco smoke.

I find the letters and petition from other building residents stating their concern with the smell of marijuana smoke coming into their units to be compelling evidence regarding the issues noted on the One Month Notice. I find this evidence sufficient to establish that the Landlord and other occupants of the building are significantly interfered with or unreasonably disturbed by the actions of the Tenant, as stated in Section 47(d)(i) of the *Act*, and as stated on the One Month Notice.

The Landlord and the Tenant were not in agreement as to whether marijuana smoke is coming from the Tenant's rental unit. When two parties provide conflicting testimony regarding what has occurred, the party with the burden of proof must provide sufficient evidence over and above their verbal testimony to establish their claims.

The Tenant submitted a witness letter and also had her witness present testimony that the Tenant or any guests are not smoking in the rental unit. However, I find a significant amount of documentary evidence from the Landlord regarding the events that led to the Tenant being served with a One Month Notice.

As the Landlord has the onus of proof, I find that they provided sufficient evidence over and above their verbal testimony to support their testimony regarding the interference or disturbance of other occupants of the rental building.

I find letters from the Landlord, along with statement from a least 8 other residents of the rental building to be compelling evidence to support the Landlord's testimony and reasons for the One Month Notice. Therefore, I find that the One Month Notice is valid, and I dismiss the Tenant's application to cancel the One Month Notice.

Pursuant to Section 55(1) of the *Act*, when a tenant's application to cancel a notice to end tenancy is dismissed, the landlord must be granted an Order of Possession, if the notice is in compliance with Section 52 of the *Act*.

Upon review of the One Month Notice submitted into evidence, I find that it complies with Section 52 of the *Act*, and therefore I grant an Order of Possession to the Landlord, pursuant to Section 55 of the *Act*.

I accept the testimony of the Landlord that they are willing to provide an additional two months for the Tenant to move. As such, I issue an Order of Possession to the Landlord, effective January 31, 2018 at 1:00 pm.

Conclusion

I grant an Order of Possession to the Landlord effective **on January 31, 2018 at 1:00 pm**. This Order must be served on the Tenant. Should the Tenant 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: November 05, 2018

Residential Tenancy Branch