



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, OLC, LRE

Introduction

On September 19, 2018, the Tenant submitted an Application for Dispute Resolution seeking to cancel a 1 Month Notice to End Tenancy for Cause dated September 8, 2018, (“the 1 Month Notice”) and requesting that the Landlord comply with the Act, Regulation or tenancy agreement, and to suspend or set conditions on the Landlords right to enter the unit.

The hearing was scheduled as a teleconference hearing. The Landlord and Tenant appeared at the hearing. The hearing process was explained and the participants were asked if they had any questions. Both parties provided affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and make submissions to me.

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.

Preliminary and Procedural Matters

The Residential Tenancy Branch Rules of Procedure permit an Arbitrator the discretion to dismiss unrelated claims with or without leave to reapply. For example, if a party has applied to cancel a notice to end tenancy, an Arbitrator may decline to hear other claims that have been included in the application, and the Arbitrator may dismiss such matters with or without leave to reapply.

I find that the most important matter to determine is whether or not the tenancy is ending. The Tenants request to suspend or set conditions on the Landlords right to enter the unit is dismissed with leave to reapply.

The Landlord testified that she received the Tenant's documentary evidence on October 25, 2018. The Landlord pointed out that the evidence was received late; however, she agreed that the evidence could be accepted and considered.

Issues to be Decided

- Does the Landlord have sufficient reason to end the tenancy and is the Landlord entitled to an order of possession?

Background and Evidence

Both parties testified that the tenancy began in December 2017. Rent in the amount of \$975.00 is due to be paid to the Landlord by the first day of each month. The tenant paid the Landlord a security deposit of \$487.00.

The rental property contains the Landlords' home and two rental cottages. The Tenant rents one of the cottages.

The Landlord issued the Tenant a 1 Month Notice To End Tenancy For Cause dated September 8, 2018. The reasons for ending the tenancy contained within the 1 Month Notice are as follows:

Tenant or a person permitted on the property by the Tenant has:

- *Significantly interfered with or unreasonably disturbed another occupant or the Landlord*
- *Seriously jeopardized the health or safety or lawful right of another occupant or the Landlord*
- *Put the Landlord's property at significant risk*

Tenant has engaged in illegal activity that has, or is likely to:

- *Damage the Landlord's property*
- *Jeopardize a lawful right or interest of another occupant or the Landlord*

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

The Notice provides information for Tenants who receive the Notice. The Notice states that a Tenant has the right to dispute the Notice within 10 days after receiving it by filing an Application for Dispute Resolution at the Residential Tenancy Branch.

The Tenant disputed the 1 Month Notice on September 17, 2018, within the required time period.

The Landlord testified that the tenancy agreement contains a term regarding illegal behaviour and smoking or vaping and that the Tenant is aware of the terms. The Landlord testified that the terms are material terms of the tenancy agreement and the Tenant placed his initials next to the terms. The Landlord provided a copy of the tenancy agreement including the addendum of terms.

The Landlord testified that she went to the rental unit to serve the Tenant a Notice of Rent Increase when she smelled cannabis. The Landlord testified that she asked the Tenant if he was smoking pot ("cannabis") and he said "yes". The Landlord testified that she reminded the Tenant of the term of the tenancy agreement.

The Landlord testified that the next day she texted the Tenant to arrange for an inspection of the rental unit. She testified that she approached the rental unit to serve a notice of inspection when she observed the Tenant inside the unit and she detected the smell of cannabis. The Landlord testified that she had a conversation with the Tenant and believes that the cannabis smoking will not stop.

The Landlord testified that she offered the Tenant an opportunity to sign a mutual agreement to end tenancy; however, the Tenant declined. The Landlord then decided to issue the 1 Month Notice.

The Landlord testified that she did not issue a breach letter to the Tenant prior to issuing the 1 Month Notice.

The Landlord testified that she has continued to detect the smell of cannabis and believes that the Tenant has continued to smoke cannabis on the property.

In response to the Landlord's testimony, the Tenant testified that the clause in the tenancy agreement is inadmissible because there is no such thing as an immediate eviction. He testified that if a material term of a tenancy agreement is breached the Tenant must receive a breach letter.

The Tenant acknowledged that he did vape cannabis in the rental unit. He testified that he vaped inside the storage room of the unit.

The Tenant testified that following his admission of vaping to the Landlord he did not smoke or vape cannabis in the rental unit.

The Tenant testified that the other Tenant who lives on the rental property also smokes cannabis. He testified that the smell of cannabis could be coming from any home in the neighborhood.

The Tenant submitted that his actions have not significantly interfered or disturbed the Landlord or another occupant and he has not seriously jeopardized the health or safety or lawful right of another occupant or the Landlord. He submitted that he has not engaged in illegal activity that will damage the Landlord's property or jeopardize a lawful right or interest of the Landlord.

The Tenant submitted that he has not breached of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.

Analysis

Residential Tenancy Branch ("RTB") Policy Guideline # 8 Unconscionable and Material Terms is intended to help the parties to an application understand issues that are likely to be relevant. The Guideline provides:

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.

In the matter before me, the Landlord has the onus to provide sufficient evidence to support ending the tenancy.

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

I find that the tenancy agreement contains terms regarding illegal acts committed on the property by the Tenant or guest and also contains a term that the Tenant or guest shall not smoke or vape anything on the property. I find that the tenancy agreement provides that a breach of these terms is grounds to immediately end the tenancy. I find that the

terms are material terms of the tenancy agreement. I find that the Tenant agreed to the terms at the start of the tenancy.

I find that the Tenant breached the material terms of the tenancy when he vaped cannabis within the storage unit of the unit. I find that possession of cannabis and smoking cannabis is not currently illegal; however, on the date of the incident the law had not changed.

I find that there is insufficient evidence from the Landlord to establish that the Tenant continued to vape cannabis on the rental property after the initial incident. The Landlord did not observe the Tenant vaping.

I have considered the whether or not the tenancy should end without the Landlord issuing a breach letter and I have considered the RTB Guideline on material terms of a tenancy. The RTB Guideline provides “*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...***” **[my emphasis]**

Other than the submissions from the Landlord that smoking or vaping anything is a material term and is not permitted the Landlord did not provide any testimony on how the action of the Tenant significantly interfered with the Landlord or how the actions seriously jeopardized the health and safety of the Landlord or put the property at risk etc.

I find that the issuance of a breach letter is an important step in ending a tenancy for a breach of a material term. I find that the Landlord failed to issued the Tenant a breach letter.

I find that the Landlord has not provided sufficient evidence to support the reasons to end the tenancy; therefore, I cancel the 1 Month Notice to End Tenancy for Cause, dated September 8, 2018.

I order the tenancy to continue until ended in accordance with the Act.

Section 72 of the *Act* gives me authority to order the repayment of a fee for an application for dispute resolution. As the Tenant was successful with his application, I order the Landlord to repay the \$100.00 fee that the Tenant paid to make application for dispute resolution. I authorize the Tenant to withhold \$100.00 from one (1) future rent payment.

I find that the Tenant is now fully aware that he has breached a material term of the tenancy agreement regarding smoking or vaping on the property. I find that any further breach of this material term by the Tenant is grounds for the Landlord to issue a notice to end tenancy.

Conclusion

The Tenant's application is successful. The 1 Month Notice issued by the Landlord dated September 8, 2018, is cancelled.

The tenancy will continue until ended in accordance with the Act.

I authorize the Tenant to withhold \$100.00 from one (1) future rent payment.

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 07, 2018

Residential Tenancy Branch