



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, OLC

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* ("the *Act*") for:

- cancellation of the landlord's One Month Notice to End Tenancy for Cause (the One Month Notice) pursuant to section 47; and
- an order requiring the landlord to comply with the *Act*, regulation or tenancy agreement pursuant to section 62; and

The landlord, the building manager and the tenant attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another.

While I have turned my mind to all the documentary evidence and the testimony of the parties, only the relevant portions of the respective submissions and/or arguments are reproduced here.

The landlord acknowledged receipt of the Application for Dispute Resolution (the Application), the Amendment to an Application for Dispute Resolution (the Amendment) and an evidentiary package which were sent by registered mail to the landlord. In accordance with sections 88 and 89 of the *Act*, I find that the landlord was duly served with the Application, the Amendment and the evidentiary package.

The tenant acknowledged receipt of the landlord's evidentiary package which was sent by registered mail to them on November 07, 2018. In accordance with section 88 of the *Act*, I find that the tenant was duly served with the landlord's evidentiary package.

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The tenant acknowledged receipt of the One Month Notice which was posted to their door on October 09, 2018. In accordance with section 88 of the *Act*, I find that the tenant was duly served with the One Month Notice on October 09, 2018.

Issue(s) to be Decided

Should the landlord's One Month Notice be cancelled? If not, is the landlord entitled to an Order of Possession?

Is the tenant entitled to an order requiring the landlord to comply with the *Act*, regulation or tenancy agreement?

Background and Evidence

Written evidence was provided that that this tenancy commenced on October 01, 2015, with a current monthly rent of \$1,303.00, due on the first day of each month. The landlord confirmed that they continue to retain a security deposit in the amount of \$587.50.

A copy of the signed One Month Notice dated October 09, 2018, was entered into evidence by both parties. In the One Month Notice, requiring the tenant to end this tenancy by November 30, 2018, the landlord cited the following reason for the issuance of the One Month Notice:

Tenant or a person permitted on the property by the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord.

A copy of a statement containing the details of dispute was also included from the landlord which indicates that the tenant has been informed to call the building manager the moment they smell smoke so the landlord can check right away but that the tenant never does call. The statement indicates that, despite going to the tenant's unit within minutes of receiving a complaint about smoke by e-mail, no smoke has ever been found. The statement further indicates that an inspection was completed on the tenant's unit and the upstairs occupant's rental unit with no sign of smoke found in the tenant's rental unit or any signs of smoking in the upstairs occupant's unit. The landlord states that the tenant continues to complain and provide false accusations about the upstairs occupant to other occupants in the building and has been warned to stop or the landlord would serve notice.

The landlord provided in written evidence:

- A copy of a statement indicating that the tenant has given two false statements in their evidence concerning the upstairs occupant moving in after the tenant's tenancy began and the upstairs occupant having another person living with them.

The landlord states that the upstairs occupant has lived in the rental unit for over 10 years prior to the tenant moving into their own rental unit and that there is no one living with the upstairs occupant. The landlord states that he never told the tenant that there was another person living with the upstairs occupant. The statement goes on to outline the landlord's evidence;

- A copy of an e-mail from the tenant to an agent of the landlord dated June 20, 2018, in which the tenant requests for the agent to have the upstairs occupant cease smoking cannabis which starts 9 PM and continues to 2 AM. The tenant states that this has been occurring over and over again with no sign of stopping or improving;
- A copy of an e-mail from the landlord to the tenant dated June 21, 2018, in which the landlord acknowledges the tenant's complaints about smoke coming into the apartment but states that the property manager and another agent of the landlord have investigated the complaints about smoke on multiple occasions without being able to find the source of the smoke;
- A copy of an e-mail exchange from the tenant to the landlord on July 09, 2018, in which the tenant states that the upstairs occupant is smoking cannabis incessantly at night which is causing the tenant health problems and that this has been going on for a long time;
- A copy of an e-mail from the landlord to the tenant on July 10, 2018, stating that the upstairs occupant does not smoke but that they will investigate the matter again for the tenant;
- A copy of an e-mail exchange between the tenant and the landlord dated July 16, 2018, in which the tenant complains about the large quantity of cannabis smoke coming from the upstairs occupant which is hard to get rid of and other complaints about noise coming from that unit. The tenant states that there is another occupant who has confirmed the upstairs occupant is using cannabis. The landlord responds by advising that they will post a notice up in the building, that they have been informed that the upstairs occupant does not smoke and for the tenant to let the landlord know when they are 100% certain where the smoke is coming from. The tenant responds by questioning how the landlord knows that the upstairs occupant does not smoke and wondering if her complaint about smoking is invalid;
- On July 17, 2018, the landlord responds to the tenant's previous e-mail stating that he is not saying the tenant's complaint is invalid, only that they are not able to locate the source of the smoke that the tenant is referring to and that there is no proof of the upstairs occupant smoking;

- A copy of a notice to all occupants in the building reminding that the building is non-smoking and that any occupants caught smoking will be given a one month notice to end the tenancy;
- On July 19, 2018, the tenant sends another e-mail to the landlord stating that the notice put up by the landlord is ineffectual and that they are 100% sure that the upstairs occupant is smoking cannabis, indicating that they do not have to be caught doing it to prove it;
- A copy of an e-mail from the tenant to the landlord dated July 21, 2018, stating that the smoke was extreme the previous evening and that morning;
- A copy of an e-mail from the tenant to the landlord dated August 01, 2018 and sent at 3:45 p.m. in which the tenant complains about coming home to a room full of smoke;
- A copy of an e-mail from the building manager to the landlord and the tenant dated August 01, 2018, which was sent at 4:10 p.m. indicating that he had been up to the rental unit within 10 minutes of receiving the previous e-mail from the tenant and 'once again' there was no smell of smoke, only the smell of fried cooking oil;
- A copy of an email from the tenant to the building manager dated August 02, 2018, in which the tenant states that by the time the manager arrived at the rental unit, the tenant had the fans on for 20 minutes or so and that the tenant stands by their statement that there is cannabis smoke;
- A copy of an e-mail from the landlord to the tenant dated August 09, 2018, acknowledging receipt of the tenant's letter sent by registered mail complaining about the upstairs occupant smoking. The landlord states that they have investigated the tenant's complaints on multiple occasions, for months, with no solid proof that the upstairs occupant is smoking anything. The e-mail mentions that the landlord has received complaints from other occupants regarding the tenant harassing them and telling them about the upstairs occupant smoking. The landlord states that they have received a complaint from the upstairs occupant about the tenant constantly accusing them of smoking in their unit. The landlord tells the tenant that they must stop accusing the upstairs occupant unless they have solid evidence and that failure to refrain from harassing other occupants in the building will result in a notice to end tenancy being served to the tenant;
- A copy of an e-mail from the tenant to the landlord dated August 15, 2018, in which the tenant complains about smoke in her apartment and that the smoke has increased into the night which needs to be put to a halt by the landlord;

- A copy of an e-mail on August 29, 2018, from the tenant to the landlord stating that there are now two occupants in the upstairs unit and they are both smoking until 3 AM and requesting the landlord to put an end to the smoking;
- A copy of an e-mail exchange on August 30, 2018, in which the tenant complains about smoke and the landlord advised to call the building manager as soon as she smells smoke;
- A copy of an e-mail dated September 06, 2018, in which the tenant states that the upstairs occupant is smoking and the only time it stopped for a few minutes is when the landlord was doing apartment checks;
- A copy of an e-mail dated September 07, 2018, in which the tenant states that the upstairs occupant is smoking which must stop as it is a non-smoking building;
- A copy of an e-mail dated September 07, 2018, in which the landlord advises the tenant that all of the tenant's allegations have remained unfounded as there has never been proof even though they have attended the rental unit within minutes of receiving the tenant's complaint about smoking. The landlord states that they have heard that the landlord is telling other occupants that the landlord is not doing anything about the tenant's complaints, which the landlord states is false and unacceptable. The landlord states that they will serve notice if the tenant continues with their behaviour of fake accusations ;
- A copy of a witness statement from the building manager dated September 14, 2018, in which the manager states that they have been responding to the tenant's complaints about smoking and noise since September 01, 2017, which have been continuously investigated by the manager with no verification of the complaints to be found as valid at any time;
- A copy of a witness statement from the upstairs occupant dated October 10, 2018, which states that they have been the target of multiple written and verbal accusations from the tenant which have been investigated and deemed unfounded since 2016. The upstairs occupant indicates that as of July 27, 2018, the tenant has inquired about the upstairs occupant smoking to other occupants, has given handwritten notes about him smoking in the rental unit and that on October 08, 2018, the tenant verbally accused the upstairs occupant of smoking all the time which the upstairs occupant indicates is false and without merit;
- A copy of a witness statement from a second occupant who states that the upstairs occupant has been a great neighbour. The occupant states that the tenant has constantly complained about the upstairs occupant and tried to engage the second occupant in conversation about smoking despite being told that he did not want to talk to the tenant about it;

- A copy of a witness statement dated October 18 ,2018, from a third occupant who stated that the tenant was complaining excessively about the upstairs occupant smoking which upset the third occupant as they are confident that the upstairs occupant does not smoke; and
- A copy of a witness statement from a fourth occupant who states that she was invited to the tenant's rental unit to smell the smoke, which she did as a favour to the tenant, and there was no smell of smoke in the tenant's rental unit. The witness stated she was the tenant's accusatory nature towards the upstairs occupant was not appreciated.

The tenant submitted into evidence;

- A copy of a record of smoke for October 20, 2018, October 30, 2018 and October 31, 2018, stating that there is smoke throughout the day which is making the tenant cough and irritating her eyes;
- A copy of a doctor's note dated October 24, 2018, stating that the tenant is exposed to cannabis smoke which results in the tenant not being able to sleep; and
- A copy of a written statement from the tenant indicating that they were informed by the landlord that there is a woman living with the upstairs occupant who is also smoking cannabis and that there apartment is constantly filled with smoke.

The landlord submitted that the tenant has been warned to stop harassing and complaining about the upstairs occupant smoking cannabis. The landlord stated that whenever they have attended the rental unit or the upstairs occupant's unit there has never been any sign of smoking and that the building is a non-smoking building. The landlord stated that the tenant has been submitting complaints about the upstairs occupant for over a year but that there has never been any evidence of any smoke.

The building manager stated that the tenant was told to call the building manager at any time when she smells it, day or night, because they really wanted to get to the source of the smoke. The manager indicated that the tenant did not ever call and when he attended the rental unit shortly after receiving an e-mail about the smoke, he went to the tenant's rental unit but could not detect any smoke from the tenant or the upstairs occupant's unit.

The landlord stated that the tenant has also been harassing other occupants by talking to them about the upstairs occupant and accusing him of smoking. The landlord stated that no other occupants in the building have witnessed the upstairs occupant smoking

or smelled any smoke and they have expressed to the landlord that they do not wish to engage with the tenant due to the false accusations. The manager stated that the tenant has been harassing the upstairs occupant by leaving notes accusing him of noise and smoking at times that the upstairs occupant was not at home and directly confronting the upstairs occupant about smoking when passing by each other in the building.

The tenant stated that the smoke began around June of 2018 and has increased in the last month. The tenant submitted that she is sensitive to smoke and has reported the issues with smoke to previous managers. The tenant stated that the upstairs occupant starts smoking in the morning and then in the evening again. The tenant questioned the landlord's ability to smell the smoke from waiting outside the door and refuted that they only smelled cooking oil. The tenant maintained that she has not talked to other occupants about the situation

Analysis

Section 47 of the *Act* allows a landlord to issue a Notice to End Tenancy for Cause to a tenant if the landlord has grounds to do so. Section 47 of the *Act* provides that upon receipt of a Notice to End Tenancy for Cause the tenant may, within ten days, dispute the notice by filing an application for dispute resolution with the Residential Tenancy Branch.

If the tenant files an application to dispute the notice, the landlord bears the burden to prove the grounds for the One Month Notice. As the tenant disputed this notice on October 11, 2018, and since I have found that the One Month Notice was served to the tenant on October 09, 2018, I find that the tenant has applied to dispute the One Month Notice within the time frame provided by section 47 of the *Act*. I find that the landlord has the burden to prove that they have sufficient grounds to issue the One Month Notice.

When two parties to a dispute provide equally plausible accounts of events or circumstances related to a dispute, the party making the claim has the burden to provide sufficient evidence over and above their testimony to establish their claim.

I have reviewed the evidence, including the affirmed testimony of all parties, and I find that the tenant has unreasonably disturbed the landlord and other occupants.

I find that it is undisputed that the tenant has been submitting multiple complaints to the landlord regarding noise issues and the upstairs occupant smoking. From June 20,

2018, to September 07, 2018, the tenant submitted 12 e-mails and a letter sent by registered mail to the landlord regarding smoke in the tenant's rental unit; however, I find that the tenant has never provided any corroborating evidence to support their claims such as another occupant in the building to confirm the upstairs occupant is smoking or a witness from outside the building who could confirm that there is smoke in the rental unit at any time.

I find that the landlord has taken reasonable action on behalf of the tenant by attending the rental unit as soon as there was an e-mail about smoke in the rental unit, by posting a notice about smoking in the common property and by advising the tenant to call when they smell smoke so that the landlord can witness it for themselves and take appropriate action. I find that, despite the landlord being convinced that the upstairs occupant was not smoking, they still performed an inspection of the upstairs occupant's rental unit on September 06, 2018, where they found no signs of smoking.

Based on a balance of probabilities and the evidence provided, including the affirmed testimony, I find that there is no evidence of any smoke in the tenant's rental unit. I find that the other occupants of the building, one of whom lives beside the upstairs occupant, have all stated that they are confident that the upstairs occupant does not smoke and have not given any indication that they have experienced smoke in the building at any time, including one witness who actually went into the tenant's unit upon request specifically to smell the smoke. I find that, despite the building manager's best efforts to confirm smoke in the rental unit by advising the tenant to call the building manager when they smell smoke and attending the rental unit immediately after receiving an e-mail from the tenant as well as other action taken, no person other than the tenant has stated that there is smoke in the rental unit or in the building.

Despite the lack of solid corroborating evidence provided by the tenant, the witness who attended the rental unit and did not smell smoke and the landlord's documented multiple attempts to locate the source of the smoke without success to validate the tenant's complaints, the tenant has still maintained that there is smoke in her rental unit. I find that it appears there is nothing that the landlord is able to say to the tenant which would convince them that there is no smoke as the tenant continues to insist, even in the hearing, that the upstairs occupant is smoking.

I find that the tenant has been unreasonably disturbing the landlord by constantly writing e-mails about smoke in her rental unit, which is not true. I find that the landlord has repeatedly responded to the tenant's concerns on multiple occasions, with no evidence

ever discovered, but that this never seems to satisfy the tenant. Based on a balance of probabilities, I find that the tenant is likely to pursue this issue in continuing to write e-mails to the landlord, as long as the upstairs occupant is in the unit above, as she has not even considered the possibility that there is no smoke and she remains steadfast in her resolve that the upstairs occupant is smoking.

I find that the tenant has unreasonably disturbed other occupants by leaving notes for the upstairs occupant at their unit about smoking, by directly accusing the upstairs occupant of smoking on October 08, 2018 and by repeatedly talking to other occupants of the building to falsely accuse the upstairs occupant of smoking.

I find that the upstairs occupant was also unreasonably disturbed by the inspection to confirm that they were not smoking. Even though the landlord is in their rights under the Act to perform an inspection, the landlord had already addressed smoking with the upstairs occupant and had confirmed that they were not smoking. I find that the most recent inspection only occurred due to the constant complaints of the tenant. I find that it is unreasonable that the upstairs occupant has had to constantly defend themselves to the landlord and other occupants in the building based on unfounded and unrelenting accusations from the tenant.

For the above reasons I find the landlord has sufficient grounds to issue the One Month Notice and to end this tenancy for cause. Therefore, the Application to set aside the One Month Notice is dismissed.

Section 55(1) of the *Act* provides that if a tenant makes an application to set aside a landlord's notice to end a tenancy and the application is dismissed, the Arbitrator must grant the landlord an order of possession as long as the notice to end tenancy complies with section 52 of the *Act*. I find that the One Month Notice is in compliance with section 52 of the *Act*. Therefore, I grant an Order of Possession to the landlord effective on November 30, 2018, the effective date on the One Month Notice.

As this tenancy is ending I find that the tenant's Application to have the landlord comply with the Act is no longer applicable. I further find that the landlord has been very responsive to the tenant's unfounded complaints and there is no evidence that they have not complied with the Act, Regulations or tenancy agreement. Therefore, I dismiss the tenant's Application to have the landlord comply with the Act.

Conclusion

I dismiss the Application to cancel the landlord's One Month Notice dated October 09, 2018, without leave to reapply.

I grant an Order of Possession to the landlord **effective on November 30, 2018, after service of this Order** on the tenant. Should the tenant(s) or anyone on the premises 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 22, 2018

Residential Tenancy Branch