



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding FIBRO HOLDINGS LTD. and
[tenant name suppressed to protect privacy]

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 1 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.

At the outset of the hearing, I explained to the parties that as these hearings were teleconferences, the parties could not see each other, so to ensure an efficient, respectful hearing, this would rely on each party taking a turn to have their say. As such, when one party is talking, I asked that the other party not interrupt or respond unless prompted by myself. Furthermore, if a party had an issue with what had been said, they were advised to make a note of it and when it was their turn, they would have an opportunity to address these concerns. The parties were also informed that recording of the hearing was prohibited and they were reminded to refrain from doing so.

All parties acknowledged these terms. As well, all parties in attendance provided a solemn affirmation. All parties acknowledged the evidence submitted and were given an opportunity to be heard, to present sworn testimony, and to make submissions. I explained the hearing and settlement processes to both parties. Both parties had an opportunity to ask questions. Both parties confirmed that they were ready to proceed with the hearing, they did not want to settle this application, and they wanted me to make a decision regarding this application. Neither party made any adjournment or accommodation requests. I have reviewed all oral and written submissions before me; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

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 compelling the landlord to comply with the Act, regulation, or tenancy agreement?

Background and Evidence

The landlord gave the following testimony. The tenancy began on September 1, 2013 with the rent of \$624.83 due on the first of each month. The landlord issued a One Month Notice to End Tenancy for Cause on April 25, 2022 for the following reasons:

Landlord's notice: cause

47 (1) *A landlord may end a tenancy by giving notice to end the tenancy if one or more of the following applies:*

(d) the tenant or a person permitted on the residential property by the tenant has

(i) significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property,

(ii) seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant, or

(iii) put the landlord's property at significant risk;

(e) the tenant or a person permitted on the residential property by the tenant has engaged in illegal activity that

(i) has caused or is likely to cause damage to the landlord's property,

(ii) has adversely affected or is likely to adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant of the residential property, or

(iii) has jeopardized or is likely to jeopardize a lawful right or interest of another occupant or the landlord;

(f) the tenant or a person permitted on the residential property by the tenant has caused extraordinary damage to a rental unit or residential property.

The landlord testified that since he purchased the building in 2019, he has been trying to transition it into a non-smoking building for the benefit of the tenants and an attempt to improve the building itself. The landlord testified that he asked all tenants that smoked to stop smoking in their unit and instead, smoke on their balcony or outside of the building. The landlord testified that the subject tenant has not complied with the request and is smoking inside her unit, in the common hallways and in the laundry room. DW testified that he has been in the tenant's unit and observed severe damage due to cigarettes. DG testified that there were cigarette burns in the unit when he attended with the landlord on two occasions. The landlord requests an order of possession.

The tenant gave the following testimony. The tenant testified that her tenancy agreement allows her to smoke in her unit. The tenant testified that the burns in the unit were from a casserole dish exploding and burning the floor and her hand. The tenant testified that the landlord has no proof that she was the one smoking in the common areas and laundry room. The tenant testified that there are other smokers in the building and doesn't understand why the landlord is picking on her. The tenant testified that she has not smoked in her unit since the landlord gave her a warning about it in 2021. SS testified that she was present when the casserole dish exploded and caused the burn marks. BS testified that the tenant stopped smoking in the unit "almost two years ago".

Analysis

It is worth noting that neither party submitted a copy of the notice to end tenancy however, I confirmed the information with both parties and that they each had a copy in front of them. I confirmed all the relevant details and dates, and the parties were content to proceed.

When a landlord issues a notice to end tenancy, they bear the burden of providing sufficient evidence to support the issuance of the Notice. The landlord needs only demonstrate that one of the reasons identified in the One Month Notice is valid in order to end a tenancy for cause. In the landlords own testimony, he stated "its very hard to prove who was smoking" in reference to the smell of smoke in the common areas and laundry room. The documentary evidence submitted by the landlord was insufficient to

support any of the grounds as noted on the notice, or more simply put, there was not enough evidence to justify ending the tenancy on any of the grounds as applied for. As a result, I find that due to the insufficient evidence before me, I hereby cancel the notice, it is of no effect or force.

The tenant did not provide sufficient evidence to show that an order to compel the landlord to comply with the Act, regulation or tenancy agreement was required, accordingly; I dismiss that portion of her application.

Conclusion

The One Month Notice to End Tenancy for Cause dated April 25, 2022 is cancelled. The tenancy continues.

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: September 27, 2022

Residential Tenancy Branch