



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC CNQ

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 1 Month Notice) pursuant to section 47; and cancellation of the landlord's 2 Month Notice to End Tenancy for Landlord Use (the 2 Month Notice) pursuant to section 49.

The landlord's agent JB attended the hearing, and had full authority to do so. Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to call witnesses, and to make submissions.

The landlord confirmed receipt of the tenant's application for dispute resolution hearing. In accordance with section 89 of the *Act*, I find that the landlord was duly served with the tenant's application. As all parties confirmed receipt of each other's evidentiary materials, I find that these were duly served in accordance with section 88 of the *Act*.

The tenant confirmed receipt of the landlord's 1 Month Notice, which was posted on her door on November 1, 2017. Accordingly, I find that the 1 Month Notice was served to the tenant in accordance with section 88 of the *Act*.

The landlord requested that the landlord's name be amended to reflect the proper name of the landlord, and not the landlord's former agent. The tenant did not have an issue with the amended. Accordingly the landlord's name was amended to include the proper name of the landlord.

The tenant indicated at the beginning of the hearing that she had applied to cancel a 2 Month Notice in error. No 2 Month Notice to End Tenancy was ever issued by the landlord. Accordingly this portion of the tenant's application was withdrawn.

Issues

Should the landlord's 1 Month Notice be cancelled? If not, is the landlord entitled to an Order of Possession?

Background and Evidence

This month-to-month tenancy began on September 1, 2016, with monthly rent currently set at \$600.00, payable on the first of each month. The landlord collected, and still holds, a security deposit in the amount of \$300.00 The tenant currently still resides in the suite.

The landlord served the notice to end tenancy providing the following grounds:

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

The landlord's agent testified that the tenant had breached a material term of the tenancy agreement by smoking marijuana inside the building. The landlord submitted a copy of the tenancy agreement addendum that states that the tenant shall not engage in any drug-related criminal activity, “including smoking marijuana”. The landlord submitted in evidence two warning letters sent to the tenant regarding the smell of marijuana in the tenant's unit, one dated January 24, 2017, and the other dated September 22, 2017 The tenant does not dispute having smoked marijuana inside the unit, but disputes the fact that this continued after the first warning letter was given.

The landlord's agent also testified that the tenant had damaged the smoke detector inside her unit, which she admits to. This single incident took place on January 24, 2017. The landlord testified that they believe that the tenant did this to avoid the detection of the marijuana smoking inside her unit.

The landlord is seeking an Order of Possession for January 31, 2018.

Analysis

Section 47(1) of the *Act* allows a landlord to end a tenancy for cause for any of the reasons cited in the landlord's 1 Month Notice.

A party may end a tenancy for the breach of a material term of the tenancy but the standard of proof is high. To determine the materiality of a term, an Arbitrator will focus upon the importance of the term in the overall scheme of the Agreement, as opposed to the consequences of the breach. It falls to the person relying on the term, in this case the landlord, to present evidence and argument supporting the proposition that the term

was a material term. As noted in RTB Policy Guideline #8, a material term is a term that the parties both agree is so important that the most trivial breach of that term gives the other party the right to end the Agreement. The question of whether or not a term is material and goes to the root of the contract must be determined in every case in respect of the facts and circumstances surrounding the creation of the Agreement in question. It is entirely possible that the same term may be material in one agreement and not material in another. Simply because the parties have stated in the agreement that one or more terms are material is not decisive. The Arbitrator will look at the true intention of the parties in determining whether or not the clause is material.

Policy Guideline #8 reads in part as follows:

To end a tenancy agreement for breach of a material term the party alleging a breach...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 regards to the landlord's allegation that there has been a breach of a material term of the tenancy agreement, I find that it is undisputed that the tenant had smoked marijuana inside her unit. The tenant, however, disputes the fact that this behaviour continued after she was made aware that future incidents could result in an end to this tenancy.

Although I am satisfied that the landlord provided the tenant with an opportunity to correct the breach, I am not satisfied that the landlord had provided sufficient evidence to support that the tenant continued to smoke marijuana inside her unit after the first warning letter was given. While the landlord did demonstrate that there were complaints about the smell of marijuana originating from the tenant's unit, the landlord did not provide sufficient evidence to support that the tenant was smoking inside her unit.

As this is a multi-unit building, with many occupants, the landlord must provide sufficient evidence to support that the marijuana smoke originated from the tenant's suite, or was due to the tenant's smoking on the property. I find the landlord has not provided sufficient evidence to support that the tenant continued to breach a material term of the agreement after being warned not to do so, and therefore I cannot grant an Order of Possession on this basis.

I find that the landlord had not provided sufficient evidence to demonstrate that this tenancy should end on the basis of the 1 Month Notice. Under these circumstances, I am allowing the tenant's application to cancel the landlord's 1 Month Notice, and this tenancy is to continue as per the *Act*.

Conclusion

The tenant withdrew her application to cancel a 2 Month Notice to End Tenancy.

I allow the tenant's application to cancel the 1 Month Notice, which is hereby cancelled. The 1 Month Notice of November 1, 2017 is of no force or effect. This tenancy continues until 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: January 10, 2018

Residential Tenancy Branch