



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards
Ministry of Housing and Social Development

DECISION

Dispute codes: CNC

Introduction

This was the hearing of the tenants' application to cancel a one month Notice to End Tenancy for cause. The hearing was conducted by conference call. The tenants and the landlord participated in the hearing.

Background and evidence

The rental unit is the upper portion of a house; the landlord lives in the lower suite. The tenancy began July 1, 2006 for a fixed term of one year and thereafter on a month to month basis. It was a term of the tenancy agreement that there would be: "No Smoking in suite".

The landlord testified that she has asthma. She became aware in December, 2007 that the tenants were smokers. She said that the tenants smoked on the balcony of the rental unit and the smoke traveled down into her suite. She asked the tenants to move to another location on the balcony to smoke and they complied, but she said she continued to smell smoke inside her suite. The landlord spoke to the tenants; they denied smoking in the rental unit. She landlord testified that she has no witnesses to the tenants' smoking so it is her word against theirs. In her submissions the landlord said that the tenants' balcony is just above suite: "The smoke will drift down into my bedroom and living area through the open windows. I cannot sleep in my bedroom or sit in my living room with the windows open without having to endure the tobacco smoke drifting downstairs. I have had to close the windows because of their smoking and cannot enjoy the fresh air."

The landlord said that the rental unit was advertised as a non-smoking unit, and had she known the tenants smoked she would not have rented to them. The tenants emphatically denied that they have smoked in the rental unit. The female tenant stated that she has very young children and never smokes in the house or in her car because of the children. The tenants testified that they rented the unit from the landlord's former partner, not from the landlord; the landlord did not move into the lower suite until some time after the tenancy commenced. She testified that when the landlord asked them to smoke on a more remote part of the balcony they complied with her request. The tenants testified that they have made an offer to purchase their own home and expected to move when the purchase completes.

Analysis and conclusion

The tenancy agreement prohibits the tenants from smoking in the rental unit. On the evidence before me I find that the tenants have complied with that prohibition. The landlord lived in the rental unit for many months and was unaware that the tenants smoked; she became aware that they smoked when she encountered them smoking on the balcony. When she requested that they move to another location to smoke they complied. I find that the landlord has not established that the tenants are in breach of the tenancy agreement or that there is sufficient cause to end the tenancy. I therefore order that the Notice to End Tenancy dated August 26, 2008 be, and is hereby cancelled.

The tenants did not request payment of their filing fee consequently I make no order for recovery of the fee for this application.

Dated September 17, 2008.