

DECISION

Dispute Codes: CNC, FF

This hearing dealt with an application by the tenant to cancel the notice to end tenancy based on cause.

The tenant said that he has lived in the apartment building for 2 ½ years. In August of 2008, he moved into the current unit #329. His co-tenant is SK.

In the latter part of 2008, the landlord received a complaint letter from the ground floor tenants living below the tenant's unit regarding cigarette buds being thrown onto the grass in front of their patio. These ground floor tenants stated that the second floor tenants have been long term tenants and that they had never encountered such problem with them. They thought that the cigarette buds came from the tenant's unit.

On December 23, the building manager, GA, talked to SK. During this conversation, GA asked SK to refrain from throwing cigarette buds onto the ground below and to clean up the cigarette buds that were there. SK said that she was not able to dig up the cigarette buds because of the snow. GA said that SK could clean them up after the snow melted.

After the snow melted, the cigarette buds on the ground were not cleaned up. On January 12, the property manager issued a warning letter to the tenant and SK asking them to clean up the cigarette buds by January 19 and to refrain from further littering.

The tenant and SK still did not clean up the cigarette buds. On January 23, the landlord served the tenant and SK a notice to end tenancy for cause.

The tenant admitted that SK is a smoker but denied either one of them had thrown cigarette buds onto the outside ground. He said that he had checked the cigarette buds on the outside ground. They are brown filters whereas SK smokes white filters. The tenant also contended that 1) the tenants below them on the second floor also smoke; and 2) the cigarette buds are on the driveway which is used by a lot of people.

Based on the above evidence, I find on a balance of probabilities that the tenant and SK did throw the cigarette buds onto the outside ground. In their complaint letter, the ground floor tenants said that the tenants on the second floor have been there for a long time and no littering problem had ever occurred until last year. In the same letter, the ground floor tenants also said that the cigarette buds were on the grass outside their patio and not on the driveway as described by the tenant. Furthermore, when GA talked to SK about the cigarette buds, SK never denied having thrown them onto the outside ground. Rather, SK said that she could not dig them up from the snow.

The landlord said that to her knowledge, the tenant and SK have not continued to throw cigarette buds onto the outside ground after the warning letter was issued. The notice to end tenancy is therefore based on the tenant's refusal to pick up their litter. I find that 1) the tenant's action in this regard is not a breach of a material term of the tenancy; 2) it has not put the landlord's property at significant risk; and 3) there is no damage done to the tenant's unit that requires repair. Furthermore, the warning letter dated January 12, 2009 states that "Any further littering will result in an eviction notice" but it did not specify the tenant's failure to pick up their litter would result in such a notice.

Based on the above, I find that the landlord has not established grounds to end this tenancy. I therefore cancel the notice to end tenancy dated January 23,

2009 and the tenancy is to continue. The tenant is entitled to recovery of the \$50.00 filing fee, which he may deduct from the next month's rent.

Dated March 11, 2009.