



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes CNC

Introduction

This hearing dealt with the tenant's application to cancel a *1 Month Notice to End Tenancy for Cause* (the Notice) and recovery of the filing fee. Both parties were present at the hearing and had an opportunity to be heard.

Issues(s) to be Decided

1. Whether there is a basis to cancel the Notice to End Tenancy.
2. Mutually agreeable terms to resolve the dispute.
3. Award of the filing fee.

Background and Evidence

I heard undisputed testimony that the tenant commenced February 1, 2009. On February 24, 2009 the landlord served the tenant with the Notice to End Tenancy. The Notice has an effective date of March 31, 2009 and indicates the reasons for ending the tenancy is that the tenant:

- seriously jeopardized the health or safety or lawful right of another occupant or the landlord and
- put the landlord's property at significant risk.

The parties provided consistent testimony that the tenant had started cooking food on the stove top in the early morning hours of February 13, 2009, the tenant fell asleep and the rental unit and hallway filled with smoke as a result of the unattended pot on the stove. The smoke detector in the rental unit sounded; however, the tenant did not hear it in his bedroom. The resident manager was alerted to the sounding of the smoke detector by the occupant living in the rental unit above the tenant's unit who heard the tenant's smoke detector sounding. The fire department was called by the resident manager, the fire department responded and cleared the smoke from the unit and the hallway.

The tenant claimed that he was not drinking on the evening of February 13, 2009 and that explained that he did not hear the smoke detector because he is hard of hearing due to working in a machine shop. The tenant expressed a desire to continue with the

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tenancy and offered to install a smoke detector in his bedroom to reduce the risk of not hearing the smoke detector sound again in the future.

The landlord also testified that on February 6, 2009 the resident manager verbally warned the tenant about excessive noise coming from his unit therefore the landlord was of the position that the tenant has disturbed other occupants on two occasions since his tenancy began. The landlord was willing to continue the tenancy provided the tenant be ordered to install a working smoke detector in his bedroom and that this decision serve as a final warning that any further disturbances will be grounds to end the tenancy. The tenant agreed to comply with the terms of the landlord.

During the hearing, the tenant agreed to withdraw his request for recovery of the filing fee.

Analysis

I accept the mutual agreement reached between the parties. As I am satisfied that conduct that threatens the health and safety of other occupants or the landlord is very serious and the tenant acknowledges that he has difficulty hearing a smoke detector when he is in his bedroom, I ORDER that the tenant install a smoke detector, including batteries, in his bedroom and ensure that it is operational at all times. The tenant must install the smoke detector immediately, but no later than April 30, 2009. If the tenant does not comply with this order, the landlord is at liberty to issue a Notice to End Tenancy for Cause under section 47(1)(l)(ii) of the Act.

This decision also serves as a final written warning to the tenant that the tenant, and any person permitted on the property by the tenant, must not unreasonably disturb other occupants of the residential property, including the landlord, and that any future complaints of excessive noise or disturbances will be grounds for the landlord to issue a Notice to End Tenancy for Cause.

The tenancy continues under the terms outlined above and I cancel the Notice to End Tenancy served upon the tenant on February 24, 2009. I make no order with respect to recovery of the filing fee from the landlord.

Conclusion

The tenancy continues under the mutually agreeable terms described above.



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The tenant has been ordered to install an operation smoke detector in his bedroom immediately, but no later than April 30, 2009.

The tenant is aware that any future complaints of excessive noise or disturbances of other occupants or the landlord will be grounds for the landlord to issue another Notice to End Tenancy for Cause.

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: April 21, 2009.

Dispute Resolution Officer