



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes (MT), CNC, FF

Introduction

This matter dealt with an application by the Tenant for more time to cancel a Notice to End Tenancy for Cause, and to cancel a Notice to End Tenancy for Cause dated July 6, 2009 as well as to recover the filing fee for this proceeding. The evidence showed that the Tenant was on time to file his application and therefore his application for more time to file is dismissed.

Issues(s) to be Decided

1. Is the Landlord entitled to end the tenancy?

Background and Evidence

This tenancy started on December 1, 2005. On July 6, 2009, the Landlord posted a One Month Notice to End Tenancy for Cause on the Tenant's door. The Notice alleged that the Tenant has engaged in an illegal activity that has, or is likely to adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant or the landlord.

The Landlord claimed that in July of 2007, she received a complaint from another tenant about the smell of marijuana coming from the Tenant's rental unit. The Landlord said the Tenant was advised of the complaint and was asked not to disturb other occupants. The Landlord said that she received further complaints about the smell of marijuana coming from the Tenant's rental unit on February 3, 2009, February 21, 2009 and March 19, 2009. The Landlord claimed that on each of these occasions, the Tenant was given a written notice of the complaints but did not receive a warning that his tenancy could be in jeopardy because of these incidents.

The Tenant admitted that he received two written notices approximately 2 weeks apart but claimed they were only with respect to complaints about noise. The Tenant said the noise was from parties his teen aged children had and that since that time he has not permitted any further parties. The Tenant also argued that he was never warned by the Landlord that his tenancy was in jeopardy.



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Analysis

I find that there is insufficient evidence to support the Landlord's allegation that the Tenant has engaged in an illegal activity by smoking marijuana in the rental unit. The Landlord relied on hearsay reports from other tenants in the rental property that they could smell marijuana coming from the Tenant's rental unit but had no independent knowledge if the Tenant was in fact in possession of a prohibited substance under the Controlled Drugs and Substances Act. Consequently, I find that there is insufficient evidence to support the One Month Notice to End Tenancy for Cause dated July 6, 2009 and it is cancelled.

As the Tenant has been successful in this matter, he is entitled to recover the \$50.00 filing fee for this proceeding. I order pursuant to s. 72 of the Act that the Tenant may deduct this amount from his next rent payment when it is due and payable.

Conclusion

The One Month Notice to End Tenancy for Cause dated July 6, 2009 is cancelled and the tenancy will continue.

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 02, 2009.

Dispute Resolution Officer