

Dispute Resolution Services

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

Decision

Dispute Codes: CNC, FF

Introduction

This hearing dealt with the tenant's application for an order setting aside a notice to end tenancy dated August 1, 2009. Both parties participated in the conference call hearing.

Issue(s) to be Decided

Does the landlord have grounds to end this tenancy?

Background and Evidence

The parties agreed that on or about August 1 the tenant was served with a one month notice to end tenancy for cause. The notice alleges that the tenant has seriously jeopardized the health or safety or lawful right of another occupant or the landlord. The parties agreed that the tenant is not permitted to smoke in the rental unit. The landlord lives in a suite immediately above the rental unit and a second rental unit is situated immediately beside the unit. The landlord testified that she can smell smoke from her unit, that she has observed the tenant walking in and out of the rental unit while smoking and testified that approximately a year ago, the tenant accidentally set his mattress on fire while smoking inside the unit. The landlord further testified that she had confronted the tenant a number of times about smoking in the unit, but that he had consistently denied having done so, blaming any smell of smoke from the other basement unit. The landlord testified that at the beginning of the summer, the tenants in the other basement unit moved out, leaving the tenant as the only smoker on the residential property. The landlord continued to smell smoke.

The tenant denied smoking inside the rental unit and testified that he always smokes outside. The tenant denied having gone in and out of the unit while smoking. The tenant acknowledged that he set his mattress on fire approximately two years ago and

testified that since that time, he has not smoked inside the unit.

Analysis

Having considered the testimony of the parties, I find that it is more likely than not that the tenant has been smoking in the rental unit. Although the rental unit has been designated as a non-smoking unit throughout the tenancy, the tenant acknowledged that he set his mattress on fire at one point by smoking inside the unit. Further, although the tenant claimed that he does not even smoke immediately outside the unit, but walks around some distance from the unit, the landlord can still smell smoke, which is inexplicable if the tenant were not smoking inside. I find that the landlord has proven on the balance of probabilities that the tenant has been smoking inside the rental unit, thereby interfering with her lawful, contractual right to a smoke free home. I decline to set the notice to end tenancy aside and accordingly dismiss the tenant's application.

During the hearing the landlord made a request under section 55 of the legislation for an order of possession. Under the provisions of section 55, upon the request of a landlord, I must issue an order of possession when I have upheld a notice to end tenancy. Accordingly, I so order. The tenant must be served with the order of possession. Should the tenant fail to comply with the order, the order may be filed in the Supreme Court of British Columbia and enforced as an order of that Court.

Conclusion

The tenant's application is dismissed. The landlord is granted an order of possession.

Dated September 25, 2009.