

DECISION AND ORDER

Dispute Codes CNC

Introduction

This hearing dealt with the Tenant's Application for Dispute Resolution, seeking to cancel a Notice to End Tenancy issued to her for alleged cause.

Both parties appeared, gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions to me.

Issues(s) to be Decided

Is the Notice to End Tenancy valid or should it be cancelled?

Background and Evidence

The Landlords provided affirmed testimony regarding the reasons why they gave the Tenant a Notice to End Tenancy. They did not supply any evidence, such as a copy of the tenancy agreement, in support of their Notice to End Tenancy.

The Landlords allege the Tenant has allowed an unreasonable amount of occupants in the unit, and has seriously jeopardised the health or safety of the Landlords. They claim that the Tenant has allowed five people to move into the rental unit. They claim the Tenant is the only person listed on the tenancy agreement.

The Landlords further claim the Tenant is smoking inside the rental unit.

The Landlords created an extra box on the Notice to End Tenancy and listed a cause not listed in the Act, that is, smoking in the rental unit. I note that normally, if a landlord is claiming for a smoking issue, they check off the box regarding a breach of a material term of the tenancy agreement. The non-smoking clause is usually included as a term in the tenancy agreement, if the rental unit is non-smoking.

The Tenant's Advocate testified that there are only two people living in the unit, and the Landlords were aware that the second person, namely the Advocate, was moving into the unit at the outset of the tenancy. He claims he was the one who paid the security deposit to the Landlords. He explained they had only one visitor who had stayed three days.

The Advocate also testified that even though the tenancy agreement did not mention anything about smoking or not smoking, the Tenant and himself only smoke outside the rental unit.

The Advocate further testified that the issues about smoking and occupants only came up after the Landlords had listed the property for sale. He suggested the Landlords are trying to avoid the free month of rent payable to the Tenant if the property is sold and the tenancy ends.

Analysis

Based on the foregoing, the affirmed testimony and evidence, and on a balance of probabilities, I find that the Notice to End Tenancy should be cancelled.

I allow the Tenant's Application for Dispute Resolution, and **I order that the Notice to End Tenancy issued August 31, 2009, is cancelled and is of no force or effect.**

The Landlords had insufficient evidence to show the Tenant had an unreasonable number of occupants in the rental unit, or that the Tenant has seriously jeopardised the health or safety of the Landlords.

The Landlords also had insufficient evidence to prove the rental unit was non-smoking under the tenancy agreement.

The Landlords are not able to create boxes on the Notice to End Tenancy document in order to end the tenancy.

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: October 26, 2009.

Dispute Resolution Officer