



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes CNC, FF

Introduction

This hearing dealt with the tenant's Application for Dispute Resolution to cancel a notice to end tenancy.

The hearing was conducted via teleconference and was attended by the landlord's agent, the tenant and the tenant's agent.

Issues(s) to be Decided

The issues to be decided are whether the tenant is entitled to cancel a 1 Month Notice to End Tenancy for Cause; to a monetary order to recover the filing fee from the tenant for the cost of the Application for Dispute Resolution, pursuant to sections 47, 67, and 72 of the *Residential Tenancy Act (Act)*.

Background and Evidence

The tenancy began on November 1, 2009 for a month to month tenancy for a monthly rent of \$361.00 due on the 1st of the month, with a security deposit of \$180.50 paid on October 5, 2009.

The landlord submitted into evidence the following documents:

- A summary of issues, dated February 4, 2010;
- A typewritten statement from a third part dated December 8, 2009;
- A business card from a respiratory care technician;
- A copy of a 1 Month Notice to End Tenancy for Cause dated December 27, 2009 with an effective vacancy date of January 31, 2010 citing the tenant or a person permitted on the property by the tenant has: significantly interfered with or unreasonably disturbed another occupant or the landlord; seriously jeopardized the health or safety or lawful right of another occupant or the landlord; put the landlord's property at significant risk; and that the tenant has engaged in illegal

activity that has, or is likely to adversely affect the quiet enjoyment, security, safety or well-being of another occupant or the landlord.

The landlord testified that she served the 1 Month Notice to End Tenancy by posting it on the door of the tenant's rental unit on December 27, 2009.

The landlord testified the tenant was picked up and removed by police. The tenant's agent indicated the removal by police was in relation to an event over seven years ago. The landlord confirmed that the illegal event in question did not occur at the rental property.

The landlord stated that she had occasion to enter the tenant's rental unit. The tenant contends that she did not have authorization to enter the rental unit because she had not given proper notice to enter the rental unit. Once in the rental unit the landlord states she saw a few ashtrays and ashes on the floor in the rental unit.

The landlord confirms that no one has witnessed the tenant smoking in the rental. The tenant states he used to bring the ashtrays back from the smoking area so that he could use the tobacco remaining from finished cigarettes. He further states he has quit smoking altogether.

Analysis

Section 47 of the Act allows a landlord to end a tenancy if the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord; seriously jeopardized the health or safety of the landlord or another occupant; put the landlord's property at significant risk.

The landlord has failed to show that the tenant has interfered with or unreasonably disturbed the occupant or the landlord at all. Despite the landlord's concern that the tenant may be smoking in the rental unit while he has oxygen tanks, equipment and supplies in his rental unit, she has failed to prove the tenant has smoked in his rental unit. In failing this, the landlord is unable to show that the tenant has jeopardized the health or safety of anyone else or put the property at significant risk.

Section 47 also allows the landlord to end a tenancy if the tenant has engaged in illegal activity that has adversely affected or is likely to adversely affect the quiet enjoyment, security, safety, or physical well-being of another occupant of the residential property. There was no evidence or testimony submitted that shows an illegal activity has occurred or that if one did that it had any impact on the occupants.

Conclusion

I grant the tenant's application to cancel the 1 Month Notice to End Tenancy for Cause dated December 27, 2009 and find the tenancy in full force and effect.

As the tenant was successful in his application, I find that he is entitled to the recovery of his filing fee of \$50.00. In accordance with Section 72(2) (a) I order the tenant to deduct the amount of \$50.00 from his next rent due to the landlord.

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: February 15, 2010.

Dispute Resolution Officer