

## **DECISION**

Dispute Codes      CNC

### Introduction

This hearing dealt with an application by the tenant for an order setting aside a notice to end this tenancy. Both parties participated in the conference call hearing.

### Issue to be Decided

Should the notice to end tenancy be set aside?

### Background and Evidence

The rental unit is a bedroom on the second floor of a home in which two other tenants occupy other bedrooms and all the tenants on that floor share a common washroom and kitchen. The lower floor of the home is occupied by other tenants. The tenancy began on March 29, 2010. The parties agreed that on or about April 1, 2010 the tenant was served with a one month notice to end tenancy for cause. The notice alleges that the tenant has significantly interfered with or unreasonably disturbed another occupant, seriously jeopardized the health, safety or lawful right of another occupant or the landlord and put the landlord's property at significant risk. The notice further alleges that the tenant has engaged in illegal activity that has adversely affected the quiet enjoyment, security, safety or physical well-being of another occupant or the landlord and has jeopardized a lawful right or interest of another occupant or the landlord. A second notice was served on April 26 which contains all of the allegations except for the two allegations regarding illegal activity.

The landlord testified that shortly after the tenancy commenced, she began receiving complaints from the other tenants who shared the common areas with the tenant. The landlord presented written, unsworn statements from the other tenants. All of the tenants are of Chinese descent. The tenant C.H. complained that the tenant made

derogatory comments about the Chinese, would laugh oddly when alone, would not leave her personal belongings in the washroom but instead brought them to the washroom each time she used it, locked her bedroom when she was not in it, opened the windows while cooking instead of using the fan, activated the smoke alarm at least twice while cooking and occasionally walked loudly. The tenant Y.L.N., stated that the tenant produced smoke while cooking and refused to turn on the fan and when Y.L.N. pointed out the smoke filling the house, the tenant pushed her aggressively. Y.L.N. further stated that the smoke alarm was activated on three occasions, the tenant screams loudly at night, slams the doors and bangs the washing machine. Both tenants expressed that they were fearful of the tenant. Y.L.N. sent the landlord a letter in late April indicating that she was seeking other accommodation due to the noise made by the tenant. In that letter, Y.L.N. also stated that the tenant is unemployed and spends most of her time in the house. As of the date of the hearing, Y.L.N. was still residing in the rental unit. The landlord testified that she had received further complaints that the tenant spent up to an hour at a time in the washroom and that she had dented the washing machine and bent the laundry room door. The landlord further testified that she had received complaints from the tenants who live on the floor below the rental unit in which they complain that the tenant is walking heavily on the floor, creating a disturbance. The landlord had applied for an early end to tenancy and a hearing was held on April 15. The claim was denied.

The tenant denied all of the landlord's allegations with exception of the allegations made regarding activating the smoke alarm. The tenant testified that within the first few days of the tenancy the smoke alarm was activated several times when she was cooking but this was because there appeared to be grease on the burner she was using. The tenant testified that there has been no problem with the smoke alarm since early April. The tenant testified that she is employed and is not in the rental unit during the day. The tenant specifically denied using the washroom for extended periods of time, walking heavily upon the floor which she claimed was unlikely as she wore slippers inside the unit, causing any damage to the washing machine or laundry room door, screaming or creating problems when she cooked. The tenant also specifically denied having pushed Y.L.N. and stated that she did not make derogatory comments about the Chinese. The

tenant suggested that she may have been targeted by the landlord for eviction because although she is of Chinese descent, she does not speak the Chinese dialect spoken by the landlord and other tenants.

### Analysis

The landlord bears the burden of proving that there are grounds to end this tenancy. As no evidence was presented regarding illegal activity, I find that the landlord has not proven those grounds. I am unable to find on a balance of probabilities that it is more likely than not that the tenant has engaged in the behaviour alleged by the landlord or that the behaviour in which she has engaged is so serious as to warrant an ending of the tenancy. Although the landlord observed the excessive smoke which activated the fire alarm on one occasion at the beginning of the tenancy, she has not personally observed any of the other behaviour she alleged. The landlord provided witness statements, but did not produce the authors of those statements for cross-examination and I am not satisfied that the complaints are as serious as the authors made them out to be. Specifically, I find that the complaints of C.H. show cause for mild irritation but do not approach providing grounds to end a tenancy. The allegation of Y.L.N. that the tenant pushed her is fairly serious, but as she was not at the hearing to provide details or make herself available for cross-examination, I find that her written statement can be given little weight. I find that the activation of the smoke alarm on several occasions at the beginning of the tenancy was unintentional and caused no damage or serious cause for concern, particularly as it has not been repeated since that time.

### Conclusion

I find that the landlord has not proven grounds to end this tenancy. I order that the notices to end tenancy be set aside and of no force or effect.

Dated: May 20, 2010

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