

## **DECISION**

Dispute Codes      CNC, DRI

### Introduction

This matter dealt with an application by the Tenant to cancel a One Month Notice to End Tenancy for Cause dated April 22, 2010. At the beginning of the hearing, the Tenant withdrew her application to dispute a rent increase.

### Issues(s) to be Decided

1. Does the Landlord have grounds to end the tenancy?

### Background and Evidence

This month-to-month tenancy started on October 1, 2009. On April 22, 2010, the Landlord served the Tenant with a One Month Notice to End Tenancy for Cause by posting it to the rental unit door. The grounds stated on the Notice were as follows:

- The Tenant or a person permitted on the property by the tenant has significantly interfered with or unreasonably disturbed another occupant or the Landlord;
- 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;
- Breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.

The Landlord claimed that due to some complaints she received about residents of the rental property smoking marijuana, on March 27, 2010 she issued general notices to all tenants that it was a breach of a term of their tenancy agreement to do so and that their tenancy could be jeopardized if they smoked marijuana or any other illegal drug on the rental property. The Landlord said that when the Tenant received this notice, she approached the Landlord at her office and told her that she was concerned because her 14 year old daughter had been smoking marijuana. The Landlord claimed that the Tenant advised her that while she did not condone her daughter smoking marijuana in the rental unit, she permitted her to smoke it outside the rental unit as she did not want to risk alienating her daughter or have her smoke it in an unsafe environment. The Landlord also claimed that the Tenant told her that her daughter's friends brought their marijuana to her residence so she could check it to ensure it was not laced with anything.

The Landlord said she was concerned about how the tenant was dealing with her daughter's marijuana use but simply reiterated to her that no drugs were permitted on the rental property. The Landlord said that on April 21, 2010 at approximately 8:40 p.m. she received a telephone call from another tenant of the rental property who claimed that she just seen the Tenant's daughter in the bathroom window of the rental unit

smoking a pipe and blowing smoke out of the window. The tenant in question (B.H.) gave evidence at the hearing that she was preparing to put out her recycling on the evening of April 21, 2010 when she saw the light of the rental unit bathroom come on and saw the Tenant's daughter light a pipe and blow smoke out of the window. The Landlord's witness admitted that it was getting dark and that she did not smell anything. The Landlord's witness claimed however that approximately a week earlier, the Tenant had mentioned to her in passing that she intended to install a fan in the bathroom to remove her daughter's marijuana smoke.

The Landlord said that as a result of this complaint, she served the Tenant with a One Month Notice to End Tenancy for Cause. The Landlord admitted that she initially told the Tenant that she had received the complaint the previous Sunday and also admitted that she did not write the date down in her calendar.

The Tenant claimed that when she spoke to the Landlord on March 28, 2010 about the general notice, she advised the Landlord that her daughter had admitted to smoking marijuana only 2 occasions in September 2009 only. The Tenant said as far as she knows her daughter has not smoked marijuana since that time and has been attending drug counselling and peer counselling. The Tenant denied telling the Landlord that she allowed her daughter to smoke marijuana outside of the rental unit and claimed that she did not tolerate the use of it. The Tenant admitted that her daughter's friends brought marijuana to her residence to check it on one occasion but she claimed that she disposed of it. The Tenant said the only reason she approached the Landlord about the general notice was because she was unsure if someone had recently seen her daughter smoking marijuana.

The Tenant argued that both she and her daughter were absent from the rental unit on April 21, 2010. The Tenant said she was travelling back from Cranbrook with a friend on April 21, 2010 and did not arrive home until approximately 10:30 p.m. The Tenant also said that her daughter stayed with her grandparents in Surrey from April 14, 2010 until April 22, 2010. The Tenant's witness corroborated her evidence of these matters. The Tenant also provided a witness statement from her neighbours with whom she said she shares a common wall. The Tenant's neighbours claimed that they have not smelled marijuana smoke coming from the rental unit nor seen any evidence of drug use by the Tenant's daughter on the rental property since she has lived there and that they would have reported any drug use to the Landlord if they had. The Tenant denied that she told the Landlord's witness (B.H.) that she was going to alter the fan in the bathroom and said instead said that she confided that she had had problems with her daughter in the Fall.

### Analysis

In this matter, the Landlord has the burden of proof and must show (on a balance of probabilities) that grounds exist (as set out on the Notice to End Tenancy) to end the tenancy. This means that if the Landlord's evidence is contradicted by the Tenant, the

Landlord will generally need to provide additional, corroborating evidence to satisfy the burden of proof.

The Tenant argued that she and her daughter were not at the rental unit on April 21, 2010 when a neighbor allegedly saw her daughter smoking marijuana in the bathroom of the rental unit and she provided corroborating evidence to that effect. The Tenant also argued that the Landlord's evidence was unreliable. In particular, the Tenant claimed that in a cover letter with the One Month Notice, the Landlord claimed that she was issuing the One Month Notice because she had received "2 complaints regarding drifting pot smoke coming from your unit." The Tenant said that when she approached the Landlord about the One Month Notice on April 22, 2010, the Landlord said she issued the Notice because she received a complaint from B.H. on the previous Sunday. The Tenant said that when she told the Landlord that she and her daughter were away the previous Sunday, the Landlord then claimed the incident had occurred the day she said she had returned (or on the 21<sup>st</sup>). The Tenant also argued that in her evidence at the hearing, B.H. said she **could not** smell marijuana smoke coming from the rental unit.

The Landlord admitted that she thought B.H. had called her on a Sunday to make the complaint but that she had not documented that call in her calendar. In any event, the Landlord argued that the Tenant made an admission to her (in the presence of her other witness, (H.C.) on March 28, 2010 that she had allowed her daughter to smoke marijuana in the rental unit. The Tenant denied saying this to the Landlord and said instead that she never would have condoned that behavior and relied on the witness statement from her neighbors to that effect.

Given the contradictory evidence of the Tenant and in the absence of any additional or more reliable evidence from the Landlord to resolve the contradiction, I find that the Landlord has not provided sufficient evidence to show that grounds exist to end the tenancy and as a result, the One Month Notice dated April 22, 2010 is cancelled and the tenancy will continue.

### Conclusion

The Tenant's application to cancel the One Month Notice to End Tenancy for Cause dated April 22, 2010 is granted. The Tenant's application to dispute a rent increase is withdrawn.

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: June 16, 2010.

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Dispute Resolution Officer