

DECISION

Dispute Codes: CNC

Introduction

This application was brought by the tenant seeking to have set aside a one-month Notice to End Tenancy for cause dated May 31, 2010 and setting an end of tenancy date of June 30, 2010.

Issues to be Decided

This application requires a decision on whether the Notice to End Tenancy should be set aside or upheld.

Background and Evidence

This tenancy began on November 1, 2010 with occupancy on November 15, 2010. Rent is \$320 per month and the landlord holds a security deposit of \$300. The landlord is a registered society providing low income and specialized housing.

During the hearing, the landlord gave evidence that the Notice to End Tenancy was served after the tenant had been given written warning and verbal warnings to desist from the use of marijuana in his rental unit.

She stated that she took the initiative after receiving general complaints about the use of marijuana in the rental building, and specific complaints from the tenant upstairs who

had on at least one occasion been hospitalized with a respiratory emergency believed to have been triggered the residual smoke.

The landlord stated that the notice was based on the tenant's use of an illegal substance in the rental unit, breach of a material term of the rental agreement and disturbance and health jeopardy of other tenants.

The tenant have evidence that he has a medical prescription for use of up to three grams daily of marijuana to control pain and tremors resulting from an accident that has confined him to a wheel chair. He submitted an application signed by his physician for Health Canada licensing for his marijuana use.

The tenant gave further evidence that during treatment, he had tried a pill form of the medication but that its efficacy was far below that of inhalation.

He stated that he takes the marijuana through a vaporizer which vastly reduces the production of any residual smoke or odour.

Analysis

On the cause of illegal activity, I find that the Notice to End Tenancy cannot be upheld as I accept that the tenant's prescription and application for licensing takes his marijuana out the of realm of "illegal" activity.

On the cause of breach of a material term of the rental agreement, I find that the clause cited prohibits the use of "illicit" drugs and, in the case of the tenant's prescribed use of the substance, I cannot find that it is "illicit."

On the cause of disturbance and health jeopardy of other tenants, I accept the evidence of the tenant that he utilizes a vaporizer which vastly diminishes the residual by-products of his inhalation.

The tenant and landlord gave differing accounts of the views of the upstairs tenant. The landlord stated that his complaints had contributed to the issuance of the notice. The tenant stated he and the upstairs tenant had dinner recently and the upstairs tenant stated he was not disturbed by the applicant's marijuana use. The applicant tenant noted that the hospitalization had resulted from arsenic poisoning, and arsenic is not a constituent of marijuana.

In the absence of any further evidence of disturbance or health jeopardy of other tenants, I cannot find cause to uphold the notice on those grounds. Therefore, I find that the Notice to End Tenancy cannot be upheld on any of the grounds claimed.

Conclusion

The Notice to End Tenancy of March 12, 2010 is set aside and the tenancy continues.

July 22, 2010