



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes CNC

Introduction

This hearing dealt with an application by the tenant to cancel a Notice to End Tenancy for Cause. Both parties participated in the conference call hearing.

Issues to be Decided

Whether the tenant is entitled to the above under the Act.

Summary of Background and Evidence

This tenancy started on July 1, 2008 with monthly rent of \$650.00 and the tenant paid a security deposit of \$325.00. The landlord served the tenant with a Notice to End Tenancy for Cause: seriously jeopardized the health or safety or lawful right of another occupant or the landlord.

The landlord testified that tenant smokes cigarettes and marijuana in his unit and it is negatively affecting his family's health. The landlord also stated that the tenant told the landlord's wife that he can hear them walking on the floor and using the bathroom which is directly above the tenant's rental unit, the landlord believes that this behaviour of the tenant's is very threatening. The landlord also stated that the tenant had changed the locks on the unit without the landlord's permission and had not provided the landlord with a key.

The tenant testified that the tenant or his guests smoke in his rental unit and the incident the landlord is referring to was about guest of the tenants smoking outside and the smoke went in to the landlord's unit via a nearby open window. The tenant stated he has never been aggressive or threatening towards the landlord and was merely letting the landlord's wife know that at times, noise from their unit was very disruptive. The tenant did admit that he changed the locks on his rental unit and has agreed that he will provide the landlord with a key. The tenant also testified that he pays his rent in cash and the landlord has never given him a receipt for the cash payments.

The rental agreement does not specify that the tenant may not smoke in his rental unit and it was explained to the landlord that when there are specific matters like 'no smoking' the landlord wishes to enforce, the landlord needed to ensure that these



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matters were in writing and part of the written tenancy agreement. The landlord was also advised that when a tenant pays cash that per the ACT a receipt is required and the landlord must comply with the Act.

Analysis

Based on the documentary evidence and testimony I find that the tenant was properly served with a notice to end tenancy for cause and that the tenant disputed the notice in the required time period.

Based on the documentary evidence and testimony of the parties I find that there is insufficient evidence to uphold the Notice to End Tenancy for Cause.

Accordingly, the notice to end tenancy is hereby set aside and the tenancy continues in full force and effect.

Conclusion

Pursuant to all of the above, the landlord's 1 month notice to end tenancy for cause is hereby set aside, with the result that the tenancy continues uninterrupted.

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: November 4, 2010

Dispute Resolution Officer