



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 an application by the tenant to cancel a notice for cause and recovery of the filing fee. Both parties participated in the conference call hearing.

Issues to be Decided

Is the tenant entitled to any of the above under the Act.

Summary of Background and Evidence

This tenancy started in October, 2009 with rent of \$650.00, the tenant paid a security deposit of \$325.00. On September 30, 2010 the landlord served the tenant with a Notice to End Tenancy for Cause: allowed an unreasonable number of occupants in the unit/site, knowingly gave false information to prospective tenant or purchaser of the rental unit/site or property/park.

It should be noted that the landlord and tenant do not have a written tenancy agreement in place that restricts the number of occupants, smoking in the rental unit or pets.

The tenant testified that she does not have an unreasonable number of guests over and when guests do come over they typically leave by 10pm as the tenant has 2 small children. The tenant also stated that as the landlord does not want her to smoke in the rental unit and will not allow her to smoke on her patio, the tenant and her guests smoke in the lane or across the street. The tenant did admit that she had a dog in the suite for a short time while she was finding a new home for it and the dog has since been removed from the suite. The tenant withheld November rent pending this hearing and has been advised to pay the rent in full today.

The landlord testified that the tenant has friends come over and they smoke outside in the lane or across the street and this upsets the landlord and his neighbours. It is unreasonable that the landlord will not allow the tenant to smoke on her patio as the tenant is not smoking in the rental unit as requested even though there is no written tenancy agreement in place restricting smoking in the rental unit. The landlord brought up the issue of the dog but the dog has not been in the rental unit for months so that is not an issue.



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The landlord provided no evidence that the tenant has had an unreasonable number of guests or has been disruptive. The landlord's claim that the tenant knowingly gave false information because the tenant smokes is unreasonable.

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.

However I find that there is insufficient evidence to uphold the Notice to End Tenancy for Cause. Accordingly, the notice to end tenancy for cause is hereby set aside and the tenancy continues in full force and effect.

The tenant is entitled to recovery of the \$50.00 filing fee.

Conclusion

I therefore allow the tenant's application and set aside the landlord's Notice to End Tenancy for Cause dated September 30, 2010 with the result that the tenancy continues uninterrupted.

The tenant may deduct \$50.00 from future rent owed to the landlord for recover of the filing fee paid to bring their application.

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 22, 2010

Dispute Resolution Officer