



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes CNC, MNDC, RR, OLC

Introduction

This hearing was convened in response to an application being made by the tenant seeking:

1. To cancel a Notice to End tenancy given for cause;
2. A monetary order for compensation for damage or loss in the sum of \$125.00;
3. An Order compelling the landlord to comply with the Act; and
4. An Order allowing the tenant to reduce rent for repairs, services or facilities agreed upon but not provided.

Issues(s) to be Decided

Does the landlord have cause to end this tenancy? Is the tenant entitled to the Orders sought?

Background and Evidence

The landlord testified that the tenant is supposed to store his bicycle in the parking area but he has been bringing it in the rental building and carrying it up the stairs and down the halls to his suite. The landlord says the bike is banging the hallway walls, it is wet when it is brought in and it is marking the carpets, the floors and the hallways. The landlord says the bike also has an offensive odour that lingers. The landlord says he has asked the tenant numerous times to keep the bike in the parkade or in his own vehicle but the tenant refuses.

While the tenant agrees he has been bringing his bike up to his suite, he denies that he has caused any damage to the rental unit by doing so. The tenant says the rental building is very old and the marks on the walls, carpets or flooring have been there for some time.

With respect to his claim for facilities and compensation for loss the tenant claims \$1254.00 representing 5 months at \$25.00 per month he says he has been without internet service which is a part of his tenancy agreement.

The landlord says that there is internet. The landlord says he installed an internet router and they have been having problems with it from time-to-time. The landlord says his technician has told him that there is some evidence that the problems emanate from the tenant's own computer. At one point the landlord had to change the access password. The tenant says the landlord did not give him the password and the landlord denies this saying that he provided everyone in the rental building with the new password and everyone else is using the internet in the building.

The tenant says that his tenancy agreement made between himself and the previous landlords contains a clause that "No smoking is allowed in the whole property. " However the landlord is smoking on the property. The tenant says he did not notice it too much until it got cold and he now notices the smell of smoke in his own suite.

The landlord says he smokes outside.

Analysis

With respect to the Notice to End Tenancy for Cause, the landlord says the tenant has caused damage to the walls and flooring and has created an odour by bringing his bike up into his suite. The tenant denies that he has caused the damage. The tenant says the marks on the walls and flooring has been there for some time. It is the landlord's burden to prove that he has cause to end this tenancy. When one party provides testimony of the events in one way and the other party provides an equally probable but

different explanation of the events, the party making the claim has not met the burden on a balance of probabilities and the claim fails. I therefore find that the landlord has failed to prove that the tenant has caused extraordinary damage to the walls and flooring by bringing his bike upstairs such that this tenancy should end. The Notice to End Tenancy is therefore cancelled. The effect of this decision is that this tenancy shall continue as though no notice had been issued.

With respect to the internet the burden of proof is on the tenant and I find he has failed to show that the internet service was not provided to him or at least not provided for a sufficient period to warrant the return of any rents paid.

With respect to the issue of smoking, the tenancy agreement says that the property is non-smoking. The landlord is bound by the tenancy agreement in existence at the time he purchased this property and he must comply with its terms. I therefore order the landlord to cease smoking on the property.
