



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes:

CNC

Introduction

This hearing was convened in response to the Tenant's Application for Dispute Resolution, in which the Tenant applied to set aside a Notice to End Tenancy for Cause.

Both parties were represented at the hearing. They were provided with the opportunity to submit documentary evidence prior to this hearing, to ask relevant questions, and to make submissions to me.

Issue(s) to be Decided

The issue to be decided is whether the Notice to End Tenancy for Cause, served pursuant to section 47 of the *Residential Tenancy Act (Act)*, should be set.

Background and Evidence

The Agent for the Landlord and the Tenant agree this tenancy began on September 01, 2010.

The Agent for the Landlord and the Tenant agree that a One Month Notice to End Tenancy for Cause was received by the Tenant on, or about, November 29, 2010. The reasons stated for the Notice to End Tenancy were that the Tenant has engaged in illegal activity that has, or is likely to, adversely affect the quiet enjoyment, security, safety or well-being of another occupant; and that the Tenant has not paid a security deposit or a pet damage deposit as required by the tenancy agreement.

The Agent for the Landlord and the Tenant agree that the Tenant has paid the security deposit that was required by the tenancy agreement. The parties agree that they did not reach a written or a verbal agreement regarding payment of a pet damage deposit.

The Agent for the Landlord stated that the illegal activity that is occurring in the rental unit is the use of marijuana. She stated that marijuana is being smoked in the rental unit and that the smell of the marijuana is bothering the occupant in an adjoining unit.

The Tenant denies that he smokes marijuana in his rental unit, although he agrees that his wife smokes marijuana in the rental unit. He stated that she smokes marijuana to alleviate medical symptoms and that marijuana has been prescribed to her by her physician. The Tenant submitted no evidence to corroborate this statement. The Tenant submitted no evidence to show that his wife has the legal right to possess marijuana.

The Tenant states that a frequent visitor also smokes marijuana in the rental unit. He submitted a card to show that the visitor is a member of the Compassion Club and allegedly has the right to purchase cannabis.

The Landlord submitted copies of emails written to them by one of the Tenant's neighbours, which clearly indicates they frequently smell marijuana in their rental unit that they believe is emanating from the Tenant's rental unit and that they are bothered by the aroma.

The Tenant contends that their neighbours are exaggerating the smell that is emanating from their rental unit. The Tenant contends that the nature of the emails from this neighbour clearly indicates they simply don't like them and that their complaints regarding marijuana are simply an excuse to end the Tenant's tenancy.

The Tenant submitted a letter from a neighbour who lives beside them, in which the neighbour states that they have never smelled illegal substances emanating from the rental unit. The Agent for the Landlord stated that the author of this unit has only been living by the Tenant for approximately two weeks.

The Tenant submitted a letter from a neighbour who lives below them, in which the neighbour makes no reference to being disturbed by the smell of marijuana.

Analysis

The undisputed evidence is that the Landlord served the Tenant with proper notice of their intent to end this tenancy pursuant to sections 47(1)(a) and 47(1)(e)(ii) of the *Act*.

Section 47(1)(a) of the *Act* stipulates that a landlord may end a tenancy if the tenant does not pay a security deposit or a pet damage deposit within thirty days of the date it is required to be paid under the tenancy agreement. As there is no indication that the Tenant has failed to pay a security deposit that was agreed to in the tenancy agreement, and there is no suggestion that the Tenant agreed to pay a pet damage deposit, verbally or in writing, I cannot conclude that he is required to pay a security deposit or a pet damage deposit at this time. On this basis, I find that the Landlord does not have grounds to end this tenancy pursuant to section 47(1)(a) of the *Act*.

Section 47(1)(e)(ii) of the *Act* stipulates that a landlord may end a tenancy if Tenant or a person permitted on the property by the Tenant has engaged in illegal activity that has,

or is likely to, adversely affect the quiet enjoyment, security, safety or well-being of another occupant. The undisputed evidence is that the Tenant's wife and at least one other person is smoking marijuana in the rental unit. There is no evidence to corroborate the Tenant's claim that his wife is able to legally possess marijuana. I have made no decision on whether the frequent visitor has the right to legally possess marijuana, as that matter is not relevant to my decision. As the Tenant has not established that his wife is legally entitled to possess marijuana, I find that she engages in illegal activity when she smokes marijuana in the rental unit.

Residential Tenancy Branch guidelines suggest that the smoking of marijuana should not be grounds for ending this tenancy unless it has been established that smoking marijuana has had a significant impact on other occupants in the residential complex or on the landlord's property. I find this guideline to be reasonable.

I find that the Landlord has submitted insufficient evidence to show that the smoking of marijuana in the rental unit has adversely affected the quiet enjoyment, security, safety, or physical well-being of another occupant. On this basis, I find that the Landlord does not have grounds to end this tenancy pursuant to section 47(1)(e)(ii) of the *Act*.

In reaching the conclusion that the Landlord has submitted insufficient evidence to show that the smoking of marijuana in the rental unit has adversely affected the quiet enjoyment, security, safety, or physical well-being of another occupant, I was heavily influenced by the emails from the neighbour who is complaining about the aroma. I find this neighbour has expressed numerous complaints about this Tenant, some of which seem decidedly more significant than the smoking of marijuana, such as noise disturbances.

In addition to the report of noise complaints, I find that this neighbour has expressed concerns regarding this Tenant that appear relatively trivial. I specifically note that the neighbour has expressed concerns that their children believe the Tenant(s) "look at them funny", yet there is no suggestion that the children's perception is based on inappropriate behaviour by the Tenant. I also note that the neighbour expressed concern that the Tenant does not walk his dog(s), which appears to be more of concern about the Tenant's character than an issue related to a disturbance. These statements cause me to question whether the neighbour has legitimate complaints or whether the neighbour is complaining simply because she dislikes the Tenant.

I also note that the neighbour has expressed concern that she can also smell dog urine and dog feces emanating from the rental unit upstairs and downstairs. I find that this statement causes me to question the credibility of the neighbour's complaints, given that it is extremely rare to be able to smell odours of this nature from an adjacent rental unit.

Given the aforementioned concerns about the credibility of the neighbour's complaints, I find that it would be inappropriate to end this tenancy without some additional evidence that corroborates the neighbour's observations that the smell of marijuana that is emanating from the Tenant's rental unit is adversely affecting the neighbour's quiet

enjoyment, security, safety, or physical well-being. Corroborating evidence, in my view, would include statements from at least one other independent party to show that the smell of marijuana entering the neighbour's rental unit from the Tenant's rental unit is sufficiently strong that it is breaching the neighbour's right to the quiet enjoyment of the rental unit.

In reaching the conclusion that it would be inappropriate to end this tenancy on the basis of the neighbour's written complaints, I was further influenced by the letter from two other neighbours who have not reported smells of marijuana. Although one of the neighbour's has only lived beside the Tenant for a short time, it appears that the smells have not bothered this neighbour or the neighbour that has lived beside the neighbour for a longer period.

In my view a person's right to quiet enjoyment is not breached simply because they can detect the smell of marijuana. Rather, I find that the smell of marijuana must be such that a reasonable person could conclude that the smell adversely affected a person's quiet enjoyment.

Conclusion

As I have determined that the Landlord has submitted insufficient evidence to establish that the Landlord has grounds to end this tenancy pursuant to sections 47(1)(a) 47(2)(e)(ii) of the *Act*, I hereby set aside the One Month Notice to End Tenancy, dated November 29, 2010 and I order that this tenancy continue until it is ended in accordance with the *Act*.

I find that the Landlord retains the right to serve another One Month Notice to End Tenancy if issues resolving noise complaints, concerns with pets in the rental unit, or any other breaches related to this tenancy, remain unresolved.

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: December 16, 2010.

Dispute Resolution Officer