



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

DECISION

Dispute Codes CNC, FF

Introduction

This matter dealt with an application by the Tenant to cancel a One Month Notice to End Tenancy for Cause dated November 29, 2010 and to recover the filing fee for this proceeding.

Issue(s) to be Decided

1. Does the Landlord have grounds to end the tenancy?

Background and Evidence

This month-to-month tenancy started on May 1, 2001. On November 29, 2010, the Landlord served the Tenant in person with a One Month Notice to End Tenancy for Cause dated November 29, 2010. The ground checked off on the Notice was that “the Tenant or a person permitted on the property by the Tenant has significantly interfered with or unreasonably disturbed another occupant of the rental property or the Landlord.”

The Landlord said the Tenant is permitted to smoke in the rental unit but is not permitted to smoke in common areas. The Landlord claims that the Tenant is a heavy smoker and that over the course of his 10 year tenancy, the rental unit walls, ceiling, carpets and window coverings have been coated with a dark resin from the Tenant smoking. The Landlord said the Tenant also has a roommate who smokes and often has guests who also smoke in the rental unit. The Landlord claims that the Tenant has never cleaned the walls, carpeting, wall coverings or furniture in the rental unit and that a strong odour of past and present smoke has permeated the hallway and other common areas including the laundry room which is nearby.

The Landlord says that she has received several complaints from other occupants of the rental property about the smell and she provided witness statements to that effect. The Landlord also says that she has tried to work with the Tenant to resolve this problem by putting weather stripping around his entrance door, by putting odour-eliminating products in the common areas and by recommending to the Tenant that he keeps his door closed and clean the walls and carpets. The Landlord said that all the Tenant has done is to shove a towel under the door which does not address the problem. In essence, the Landlord argued that the Tenant has failed to maintain

reasonable standards of cleanliness and this is significantly interfering with the right to quiet enjoyment of other occupants of the rental property.

The Tenant's advocate claimed that she has recently visited the rental unit and did not find the smell of stale smoke to be overwhelming. The Tenant's advocate argued that at least 2 of the complainants based their statements on a misapprehension that the rental property was "non-smoking." The Tenant's advocate also argued that the other tenants who complained may just be overly sensitive to the smell of smoke which was unfair given that she found that many other odours including those from cooking also drifted into the common areas of the building.

Analysis

Section 28 of the Act says (in part) that a tenant has a right to quiet enjoyment which includes but is not limited to the right to freedom from unreasonable disturbance and use of common areas for reasonable and lawful purposes, free from significant interference.

Although the Landlord argued that the Tenant has been given a number of verbal and written warnings about the effect the strong smell of smoke coming from his rental unit is having on other occupants of the rental property, there is little evidence of this. Instead, most of the Landlord's warnings (over the past 2 years) appear to have been related to instances where the Tenant's guests and roommate were alleged to have been smoking in common areas of the rental property. On May 2, 2010, for example, the Landlord gave the Tenant a written warning that his guests were smoking in common areas and "smoking from your suite and your guests are disturbing the quiet enjoyment of other tenants. The Landlord *suggested* that the Tenant keep his door closed when in his suite consider cleaning the walls and carpets in his unit.

It is a fundamental principle of administrative fairness and natural justice that a person accused of violating a rule or law, be afforded some warning that their conduct is not acceptable, be made aware that failure to cease the conduct will place their tenancy in jeopardy and also be given an opportunity to answer to the allegations. There is no evidence that the Tenant was ever advised by the Landlord that if he failed to clean the accumulation of smoke resin from his unit that his tenancy would end. In fact it was clear at the hearing of this matter that neither the Tenant nor his advocate knew that the alleged uncleanliness of the rental unit was the reason the Tenant had been served with the One Month Notice and they believed instead that it had to do with the Tenant's guests allegedly smoking in common areas of the rental property.



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Consequently, I find that the Landlord failed to warn the Tenant that the cleanliness of his rental unit was an issue and that he needed to take certain steps to remedy it or his tenancy would end. For this reason, I am granting the Tenant's application to cancel the One Month Notice to End Tenancy for Cause. By virtue of these proceedings, however, the Tenant now has notice that the cleanliness of his rental unit is an issue of significant concern to the Landlord and may be considered a valid ground for ending the tenancy in future.

As the Tenant has been successful on his application, he is entitled pursuant to s. 72(1) of the Act to recover the \$50.00 filing fee he paid for this proceeding from the Landlord. I order pursuant to s. 72(2) of the Act that the Tenant may deduct that amount from his next rent payment when it is due and payable to the Landlord.

Conclusion

The Tenant's application is granted and the One Month Notice to End Tenancy for Cause dated November 29, 2010 is cancelled.

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: January 10, 2011.

Residential Tenancy Branch