



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

DECISION

Dispute Codes MT, CNC, MNDC, CNR, FF

Introduction

This hearing was convened by way of conference call to deal with the tenants' application for an order cancelling a notice to end tenancy for cause; for an order cancelling a notice to end tenancy for unpaid rent or utilities; for an order permitting the tenants more time to make an application to cancel a notice to end tenancy; for a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement; and to recover the filing fee from the landlord for the cost of this application.

Both tenants and the named landlord attended the conference call hearing, gave affirmed testimony, and were given the opportunity to cross examine each other on their evidence. The parties also provided evidence in advance of the hearing to the Residential Tenancy Branch and to each other. All information and testimony provided has been reviewed and is considered in this Decision.

At the outset of the hearing, the landlord stated that the rent has been paid, there are currently no rental arrears, and he therefore withdraws the notice to end tenancy for unpaid rent or utilities. That notice is hereby cancelled.

Further, the tenants stated that they misunderstood the application form that they completed, and it was determined that the application for an order cancelling the notice to end tenancy for cause was made within the time prescribed by the *Residential Tenancy Act*, and therefore an order to that effect is not required. That application is hereby dismissed.

Issue(s) to be Decided

Are the tenants entitled to an order cancelling a notice to end tenancy for cause?
Are the tenants entitled to a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement?

Background and Evidence

This month-to-month tenancy began on August 1, 2010 and the tenants still reside in the rental unit. Rent in the amount of \$790.00 per month is payable in advance on the 1st day of each month. At the outset of the tenancy the landlord collected a security deposit from the tenants in the amount of \$395.00.

The landlord testified that the tenants have smoked marihuana in the rental unit and on the balcony. The tenants were told at the outset of the tenancy that drug activity is not permitted on the premises. He stated that on one occasion, although he did not make note of the date, he smelled marihuana in the hallway outside this rental unit. The rental unit is an apartment in a building containing 28 units. He stated that he put his nose to the door and is certain that the odour came from this particular unit. He further testified that he knocked on the door but no one answered. He also was in the unit on December 8, 2010 and noticed 3 packages of rolling papers on the table.

The landlord further testified that on December 9, 2010 he attended the rental unit to conduct repairs to the sliding glass door. A male guest of the tenants answered the door, and the landlord commenced his duties when he was verbally abused by the guest. He further stated that he felt threatened by the guest's demeanour, statements and body-language, so he left the unit without completing the repairs. He called the police and the police eventually told the landlord that the guest was not to have any contact with the landlord. The landlord has not seen the guest on the premises since, but the landlord has appointed another person for future dealings with this unit.

The landlord issued a 1 Month Notice to End Tenancy for Cause on December 9, 2010, a copy of which was provided in advance of the hearing. He testified that he served the notice by posting it to the door of the rental unit on December 9, 2010. That notice states that the tenant or a person permitted on the property by the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord, and the tenant has engaged in illegal activity that has, or is likely to adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant or the landlord. He further testified that he has had no complaints about these tenants from other tenants in the building, but that he felt threatened and has worked for 7 years to ensure that no drug activity occurs on the premises. The landlord asks for an Order of Possession.

One of the tenants testified that after the landlord entered the rental unit on December 9, 2010 her guest was talking to him about the repairs. She stated that during the conversation the landlord was being sarcastic, disrespectful and rude to her guest. Her guest became agitated, and the guest and the tenant asked the landlord to leave. She

stated that a few days prior, the landlord had been in the rental unit with another man who had a conversation about repairs, and she felt that the conversation her guest was having with the landlord was similar in nature, but instead, the landlord was very rude.

The tenants also testified that the landlord is rude to the tenants and intimidates them. The heat was not working properly in the unit, and the landlord had lent them some space heaters. He subsequently asked how the heat was working, and they responded that it was still cold. He told them that they could keep the heaters for awhile longer but they were expected to purchase their own. He has since accused them of refusing to give the heaters back. They are not refusing to give them back, he has not returned to retrieve them.

The tenants did not lead any testimony with respect to the application for a monetary order.

Analysis

In the circumstances, I have no reason to disbelieve either party. I accept the evidence of the landlord that he felt threatened by the male guest, and I also accept the evidence of the tenants that the landlord's behaviour was rude, sarcastic and disrespectful. I also accept the evidence of the tenants that they are intimidated by the landlord. I also have the evidence of the landlord that the police officer told him that the guest is not to have any contact with the landlord and the guest has not returned to the premises.

With respect to the one occasion that the landlord smelled marihuana coming from the rental unit, I also have the evidence of the landlord that no other tenants have complained. Further, I refer to Residential Tenancy Policy Guideline 32 Illegal Activities, and although I am not bound by those guidelines, I find that it is reasonable in these circumstances:

"In considering whether or not the illegal activity is sufficiently serious to warrant terminating the tenancy, consideration would be given to such matters as the extent of interference with the quiet enjoyment of other occupants, extent of damage to the landlord's property, and the jeopardy that would attach to the activity as it affects the landlord or other occupants.

"For example, it may be illegal to smoke a single marihuana cigarette. However, unless doing so has a significant impact on other occupants or the landlord's property, the mere smoking of the marihuana cigarette would not meet the test of an illegal activity which would justify termination of the tenancy."

In this case, although I accept the landlord's testimony that he has worked to ensure a drug free environment in the building, I cannot find that the activity of the tenants has justified termination of the tenancy. Nor can I find that the activity has adversely affected anyone, and has not had a significant impact on other occupants or the landlord's property.

Conclusion

For the reasons set out above, the tenants' application for a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement is hereby dismissed.

The tenants' application for an order cancelling a notice to end tenancy for cause is hereby allowed and I hereby cancel the notice to end tenancy.

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 14, 2011.

Residential Tenancy Branch