



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

DECISION

Dispute Codes CNC, OLC, FF

Introduction

This hearing dealt with an application by the Tenant to cancel a One Month Notice to End Tenancy for Cause (the Notice), dated February 27, 2011 with an effective date of March 31, 2011 with the reasons as follows:

- Tenant is repeatedly late paying rent;
- Tenant has allowed an unreasonable number of occupants in the unit;
- Tenant has seriously jeopardized the health or safety or lawful right of another occupant or the landlord.

The Landlord and Tenant each were given full opportunity to be heard, to present evidence and to make submissions.

Issue(s) to be Decided

Is the Notice for cause is valid?

Background and Evidence

The Tenancy of a two bedroom unit started on October 1, 2009. Rent in the amount of \$700.00 is payable in advance on the first day of each month.

The Landlord's evidence for cause is as follows:

Late Rent

The Tenant was late in paying rent for June, July and August 2010. There have been no other instances of late rent.

Unreasonable Number of Occupants

In December 2010, another person began staying at the unit with the Tenant. The Landlord was aware of that person being there however did not ask the tenant to have that person leave.

Tenant has Jeopardized the Health of another Occupant or the Landlord

The Landlord states that the Tenant smokes in the unit and that there is not supposed to be any smoking in the unit as it will cause the walls to be dirty. The Landlord lives at another location.

The Tenants state that they had no idea that the landlord had any problems until they received the application from the Landlord. They did not know what evidence the Landlord was relying on until they attended the hearing. The Tenants deny all three reasons for cause and deny that the Landlord has sufficient evidence for cause.

Analysis

Although the Tenant was late in paying rent on three consecutive months, these late rent payments occurred several months ago and there have been no recent instances of late rent payments. Given the length of the tenancy and the isolated nature of the late rent payments, I cannot find sufficient evidence of cause in relation to this reason.

It cannot be said that one person in a 2 bedroom unit with one Tenant can be an unreasonable number of occupants. Given this number, I cannot find sufficient evidence of cause in relation to this reason.

While smoking in a unit may be restricted by a landlord, the Landlord was not able to provide evidence that the smoking in the unit has seriously jeopardized either her health or the occupants' health. It would appear, rather, that the landlord is concerned with damages to the unit. Given this lack of evidence on serious jeopardy to human health, I cannot find sufficient evidence of cause in relation to this reason.

Given the above findings on lack of cause, I find that the Notice to End Tenancy for Cause is not valid.

As the outcome of this dispute favours the Tenant, I find that the Tenant is eligible for a refund of the \$50.00 filing fee and the Tenant may deduct this amount from future rent payable to the Landlord.

Conclusion

The Landlord's Notice to end Tenancy is not valid. The Tenant may deduct \$50.00 from future rent payable to the landlord in reimbursement of the filing fee for the Tenant's 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: March 21, 2011.

Residential Tenancy Branch