



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

DECISION

Dispute Codes

CNC

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 10, 2011, with an effective date of March 31, 2011.

The tenant also applied for a myriad of other remedies: for the landlord to make repairs, to comply with the Act, to provide services or facilities required by law, to return the tenant's personal belongings, to allow access to the unit, and to allow a tenant to reduce rent. It is my decision that I will not deal with all the dispute issues that the tenant has placed on their application. For disputes to be combined on an application they must be related. Not all the claims on this application are sufficiently related to the main issue to be dealt with together. Therefore, I will deal with the tenant's request to set aside, or cancel the landlord's Notice to End Tenancy for Cause dated February 10, 2011, and I dismiss the balance of the tenant's claim, with liberty to re-apply, if necessary.

Both parties attended the hearing and were given a full opportunity to present evidence and make submissions. Neither party requested an adjournment or a Summons to Testify. Prior to concluding the hearing both parties acknowledged they had presented all of the relevant evidence that they wished to present.

Issue(s) to be Decided

Is the notice to end tenancy valid and issued for valid reasons?
Should the Notice to End dated January 03, 2010 be set aside?

Background and Evidence

In this type of application, the burden of proof rests with the landlord to provide compelling evidence that the Notice was validly issued for the stated reasons. I do not

have benefit of the Notice to End, but the parties agree that the Notice to End contained the reasons:

- *Tenant is repeatedly late paying rent*
- *Tenant has engaged in an illegal activity that has, or is likely to:*
 - Damage the landlord's property*
 - Adversely affect the quiet enjoyment, security, safety or physical well being of another occupant or the landlord*
 - jeopardize a lawful right or interest of another occupant or the landlord*

The tenant disputes the Notice to End stating that all the purported reasons are not valid and are false allegations.

This tenancy started in 2008. The tenant occupies the basement of a house rented from his sister (the sister), who rents the entire house from the owner of the residential property. The Notice to end was purportedly signed by both the sister and the owner. During the hearing it was very evident from the verbal exchanges between the tenant (the brother) and the sister that there is a very acrimonious relationship between them. The sister alleges that the brother has been repeatedly late paying rent over the past 3 and one half years, 8 out of every 10 months – which the brother denies.

The sister claims that her brother smokes marijuana in the house, that he stores the marijuana in the garage of the house, and that he repeatedly “deals” in marijuana from the house. She testified that his marijuana use is negatively impacting her 4 children, one of whom (her son) reportedly took some of the marijuana from the brother's garage and sold it at his high school to other students. The sister provided the high school's Suspension Report which indicates that her son was suspended from school for selling and keeping marijuana at school and that he had indicated he had acquired the marijuana from the garage of his home. The sister testified that she is also very concerned of the impact of her brother's marijuana use on the residential property as she operates a home-based daycare and that it is imperative that there is no indication of drug use in or around the residential property.

The brother, and applicant, testified that he has a permit to possess and smoke marijuana – which is known to the landlord / sister. He testified that he does not smoke marijuana in the house and does not store it in the garage, but only keeps it on his person, and that he does not sell it. He testified that the sister's son simply lied at school to avert responsibility.

The tenant provided a witness (estranged wife) who stated that the tenant does not smoke in his home and that the landlord herself does drugs in her home.

Analysis

On preponderance of the evidence and on the balance of probabilities I have reached a decision.

In light of the evidence by both parties that the tenant has a permit to possess and use marijuana I find that I have not been provided with evidence that the reasons upon which the landlord is relying to end the tenancy are valid. I find that the tenant's marijuana use and possession is not an *illegal activity*. I further find that the landlord has not provided sufficient evidence in regards to the tenant's late payments of rent. I find I am unable to conclude that the Notice to End was issued for valid reasons, and as a result I am unable to establish that the landlord issued the tenant a valid Notice to End. Therefore, **I Order** the Notice to End dated February 10, 2011 is set aside. The tenant should note that they have come perilously close to losing their tenancy and that the landlord is at liberty, if necessary, to issue another *valid* Notice to End for *valid* reasons.

Conclusion

The tenant's application is granted. The landlord's Notice to End is **set aside and is of no effect**. The tenancy continues.

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*.