

## **DECISION**

Dispute Codes: OPC, FF

### Introduction

This hearing dealt with the Landlord's Application seeking to end the tenancy, based on a 1 Month Notice to End Tenancy, and to recover the filing fee for the Application.

Both parties appeared, gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions to me.

### Issue(s) to be Decided

Is the Landlord entitled to an order of possession for the rental unit and to obtain a monetary order?

### Background and Evidence

This tenancy began on June 1, 2009, for an initial one year fixed term, continues now on a month to month basis, current rent is \$1,341.00 and a security deposit in the amount of \$650.00 was paid on June 1, 2009.

The Landlord issued a 1 Month Notice to End Tenancy for Cause (the "Notice") to the Tenant on January 31, 2011, with a stated effective move out date of March 31, 2011. The cause as stated by the Landlord alleged the Tenant breached a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.

The Landlord's Agent testified that she witnessed the Tenant smoking on the premises numerous times, in violation of the tenancy agreement. However, upon query, the Agent stated that she had witnessed the Tenant smoking only once, that being in mid November 2009, but that she had witnessed a companion of the Tenant smoking in mid September 2010, and believed the Tenant was smoking in her rental unit in February 2011. The Agent testified that when she knocked on the door, no one answered, so she was unable to confirm someone smoking in the rental unit.

Upon query, the Agent testified that the premises containing the rental unit has 112 units, all non-smoking, 4 floors and 33 units on the Tenant's floor. The Agent admitted that there have been no complaints made by other tenants about the alleged smoking, but that the Notice was issued on the three incidents described above.

In support of the application, the Landlord submitted the tenancy agreement and two written warnings from the property manager, one dated November 13, 2009, and the other dated September 14, 2010.

The Tenant responded by saying that she smoked just the once, but it was a time of high emotional stress on the way to her mother's funeral and that she did not realize she was still in the parking lot. The Tenant denied smoking the other times.

The Tenant stated that she vacated the rental unit on February 26, 2011, after failing to negotiate a mutual end to the tenancy with the property manager and that she has paid the rent for March 2011.

After the Tenant's testimony, the Landlord's Agent acknowledged an order of possession was no longer necessary.

### Analysis

Based on the above testimony and evidence, and on a balance of probabilities, I find that the 1 Month Notice to End Tenancy for Cause issued by the Landlord was no longer being requested by the Landlord due to the Tenant vacating the rental unit.

Additionally, I find the Landlord did not establish proof that the Tenant breached a material term which was not corrected within a reasonable time after written notice to do so. Rather I find the Landlord's Agent's testimony concerning witnessing the Tenant smoking lacked credibility. Therefore I **dismiss** the Landlord's application, including the claim to recover the filing fee.

### Conclusion

The Landlord's Application is dismissed.

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 24, 2011.

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Residential Tenancy Branch