



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

DECISION

Dispute Codes CNC, FF

Introduction

This hearing was convened by way of conference call to deal with the tenant's application for an order cancelling a notice to end tenancy for cause, and to recover the filing fee for the cost of this application.

The tenant did not attend the hearing, however an agent for the landlord company attended and asked for an Order of Possession. The agent gave affirmed testimony to substantiate that request.

Issue(s) to be Decided

Is the tenant entitled to an order cancelling a notice to end tenancy for cause?
Is the landlord's request for an Order of Possession justified?

Background and Evidence

The landlord's agent testified that this month-to-month tenancy began on August 1, 2001 and the tenant still resides in the rental unit, which is a suite in an apartment complex. Rent in the amount of \$728.00 per month is payable in advance on the 1st day of each month and there are no rental arrears. On July 15, 2001 the landlord collected a security deposit from the tenant in the amount of \$265.00.

The landlord's agent further testified that a 1 Month Notice to End Tenancy for Cause was served on the tenant personally on February 23, 2011. The landlord provided a copy of that notice in advance of the hearing, which states that the tenant has engaged in 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; that the tenant has caused extraordinary damage to the unit/site or property; and for a breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so. The notice is dated February 23, 2011 and contains an expected date of vacancy of March 31, 2011.

The landlord's agent also testified that 3 other tenants in suites adjacent to this rental unit have complained in writing about cigarette and marihuana smoking that has affected the enjoyment of their tenancy. One of the complaints also states that they could smell the smoke in the hallways and common areas and that the smoke is coming from this rental unit. Another states that their unit and clothing smell of cigarette smoke as a result of the tenant's smoking in the common area. The landlord's agent also pointed out an Addendum to the tenancy agreement which was also provided in advance of the hearing which states that the resident shall not engage in any criminal activity including drug-related criminal activity, and that violation of those provisions which are reasonable and material terms of the tenancy agreement shall be good cause for a notice to end a tenancy. The tenancy agreement also contains a provision that no smoking is permitted in common areas.

The landlord's agent also testified that the tenancy agreement states that no pets shall be kept on the premises without the written consent of the landlord, and that no consent was given to this tenant to keep a dog. He testified that he received a complaint in writing from another tenant about a dog in this tenant's unit, and that the person was fearful of the dog. The landlord's agent sent the tenant a breach letter on January 26, 2011 requesting that the dog be removed from the rental unit by January 28, 2011. The landlord went to the rental unit on January 28, 2011 and no dog was present, but more verbal complaints were received from other tenants about the dog in February, 2011. The landlord feels the tenant hid the dog on January 28 or had someone keep it for that particular inspection.

The landlord's agent further testified that the carpets in the living and bedroom of the rental unit have cigarette burns, which were discovered during an inspection of the suite on February 25, 2011.

Analysis

The tenant has applied for an order cancelling a notice to end tenancy, but failed to attend at the conference call hearing. Therefore, the tenant's application must be dismissed.

In the event that a landlord requests an Order of Possession and the notice to end the tenancy is upheld, I am required to issue an Order of Possession.

In the circumstances, I find that the landlord has established that the tenant has breached a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so. I further find that the landlord has established that the tenant has engaged in illegal activity by smoking marihuana within

the complex and cigarettes within the common areas of the complex, and the that has adversely affected the quiet enjoyment, security, safety or physical well-being of another occupant or the landlord.

Conclusion

For the reasons set out above, I hereby grant an Order of Possession in favour of the landlord effective March 31, 2011 at 1:00 p.m.

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 17, 2011.

Residential Tenancy Branch