



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

DECISION

Dispute Codes CNC FF

Introduction

This hearing dealt with an application by the tenants to cancel a notice to end tenancy for cause. One of the tenants and three agents for the landlord participated in the teleconference hearing.

Issue(s) to be Decided

Is the notice to end tenancy valid?

Background and Evidence

On February 15, 2011, the landlord served the tenants with a notice to end tenancy for cause. The reason cited on the notice for ending the tenancy was as follows: the tenant has engaged in illegal activity that adversely affected the quiet enjoyment, security, safety or physical well-being of another occupant. The illegal activity alleged was that the tenant was smoking marijuana on his balcony and adversely affecting a tenant who lives two floors above him. The landlord stated that in previous discussions the tenant told the landlord that he did not smoke marijuana, and the landlord was unaware that the tenant was permitted to smoke marijuana for medicinal purposes until they received the tenant's evidence.

The tenant submitted a doctor's note that prescribes medicinal marijuana for the tenant's chronic pain. The landlord did not question the validity of the doctor's note.

Analysis

I accept the evidence of the tenant that he is legally entitled to smoke medicinal marijuana. The landlord was not therefore successful in establishing that the tenant was engaged in illegal activity. Accordingly, I find that the notice to end tenancy is not valid.

Conclusion

The notice to end tenancy is cancelled, with the effect that the tenancy continues.

As the tenant's application was successful, he is entitled to recovery of the filing fee for the cost of his application. The tenant may deduct \$50 from his next month's rent.

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 1, 2011.

Residential Tenancy Branch