



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

CNC

Introduction

Both parties were present at the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained, evidence was reviewed and the parties were provided with an opportunity to ask questions about the hearing process. They were provided with the opportunity to submit documentary evidence prior to this hearing, all of which has been reviewed, to present affirmed oral testimony and to make submissions during the hearing. I have considered all of the evidence and testimony provided.

Issue(s) to be Decided

Should the 1 Month Notice Ending Tenancy for Cause issued on May 18, 2011, be cancelled?

Background and Evidence

The tenancy commenced on May 1, 2011; rent is due on the first day of each month. The parties did not sign a tenancy agreement. The tenant rents a 2 bedroom unit above a commercial unit; there are other rentals in the building.

The landlord and the tenant agree that a 1 Month Notice to End Tenancy for Cause was served on the tenant indicating that the tenants were required to vacate the rental unit on May 31, 2011. The reasons stated for the Notice to End Tenancy were that the tenant has:

- allowed an unreasonable number of occupants in the unit;
- significantly interfered with or unreasonably disturbed another occupant or the landlord;
- seriously jeopardized the health or safety or lawful interest of another occupant or the landlord;
- put the landlord's property at significant risk;
- engaged in illegal activity that has, or is likely to, adversely affect the quiet enjoyment, security, safety or well-being of another occupant and jeopardize a lawful right or interest of another occupant or the landlord; and

- that the tenant knowingly gave false information to a prospective tenant or purchaser of the rental unit.

The landlord stated that the tenant is smoking marijuana, which is an illegal activity. Cigarette smoking is allowed in the building, but the landlord has verbally warned the tenant that marijuana is not allowed. The landlord stated that others in the building do not smoke marijuana and that his daughter, who lives in the building, is allergic to the smoke.

On May 17, 2011, occupants of the building reported a disturbance caused by the tenant and his guests who were coming and going from the building between 2 and 4 a.m. The next day the landlord issued the tenant the Notice ending tenancy. Since May 17, 2011, the tenant has smoked marijuana in the building on at least 2 occasions.

The tenant stated that he is not the only person in the building who smokes marijuana and that one of these individuals recently moved out of the building. The tenant acknowledged that he had his girlfriend over and that there was some activity on the night of May 17, 2011.

The landlord stated that the tenant has had too many people over visiting and that he has been dishonest about his marijuana smoking.

Analysis

After considering all of the written and oral evidence submitted at this hearing, I find that the landlord has provided insufficient evidence to show that the tenant has breached the Act for in relation to the reasons on the Notice.

The tenant was not given any written warning of disturbances caused on May 17; the landlord's response was to issue a Notice the next day without providing the tenant with an opportunity to respond to the concerns. A one-time occurrence does not establish grounds for eviction; however, repeated disturbances affecting the quiet enjoyment of other occupants could form the basis for a Notice ending tenancy.

Dishonesty is not a reason to evict a tenant; the landlord appears to have misunderstood the false information reason.

There was no evidence before me that the tenant has allowed an unreasonable number of people to occupy his 2 bedroom unit.

The landlord has the burden of proving that the tenant's occasional smoking of marijuana has adversely affected the quiet enjoyment of other occupants; there was no evidence of this before me. Verbal testimony stating that something is so is insufficient to prove the claim that the tenant has disturbed others to the point where his tenancy should end. In

the absence of any evidence proving the tenant's activities have adversely affected the quiet enjoyment of others, jeopardized the health, safety or lawful right of the landlord or other occupants, I find the Notice based on these reasons, is of no force.

Further, in the absence of evidence that the smoking of marijuana has jeopardized others; the smoking of an occasional marijuana cigarette does not meet the test of an illegal activity that should end this tenancy.

I did suggest during the hearing that the tenant consider the needs of other occupants; however the building does allow cigarette smoking, which may be difficult to discern from any loss of quiet enjoyment claimed as the result of smoke.

Conclusion

As I have determined that the landlord has submitted sufficient evidence to establish that he has grounds to end this tenancy pursuant to section 47 of the Act, I hereby set aside the 1 Month Notice to End Tenancy, dated May 18, 2011, and Order that this tenancy continue until it is ended in accordance with the Act.

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: June 21, 2011.

Residential Tenancy Branch