



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC

Introduction

This hearing dealt with the tenants' application to cancel a 1 Month Notice to End Tenancy for Cause.

The parties appeared, gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions to me.

Issue(s) to be Decided

Is there a basis to cancel the Notice to End Tenancy for Cause?

Background and Evidence

This one year, fixed term tenancy began on October 1, 2008, continues now on a month to month basis, monthly rent is \$700.00, and the tenant paid a security deposit of \$350.00 on September 25, 2008.

The testimony and evidence demonstrates that the landlord issued a 1 Month Notice to End Tenancy for Cause (the "Notice") to the tenant on September 1, 2011, with a stated effective vacancy date of October 1, 2011. The causes as stated on the Notice alleged that the tenant has engaged in illegal activity that has or is adversely affecting the quiet enjoyment of another occupant or the landlord. The landlord also wrote another cause, stating the tenant has not paid the strata by-law fines.

Although the usual order of procedure would require the landlord to proceed first in the hearing to support or explain the Notice, both parties submitted that the underlying reason leading to the issuance of the Notice was due to an issue with the strata council and that the landlord did not want the tenancy to end.

The evidence and testimony shows that the strata council has issued repeated fines to the tenant, as occupant, not the owner/landlord, due to the tenant's alleged smoking in the rental unit and premises.

The tenant submitted and the landlord agreed that the tenant was permitted to smoke in the rental unit, pursuant to the tenancy agreement, that the strata council passed a strata bylaw in 2010, banning smoking with the residential property's units and that the council is now seeking to enforce that bylaw.

The parties agreed that their belief is that the tenant's right to smoke in the rental unit was "grandfathered" and that he retains that right.

The landlord also submitted that the reason for issuing a Notice was in an attempt to have the Residential Tenancy Branch make a binding decision against the strata council.

The landlord acknowledged that the tenant has not engaged in any illegal activity.

Analysis

Based on the above testimony and evidence, and on a balance of probabilities, I find as follows:

Only the evidence and testimony relevant to the issues and findings in this matter are described in this Decision.

In this instance, the burden of proof is on the landlord to prove the causes listed on the Notice.

The landlord's agent acknowledged that the tenant had not engaged in illegal activity and that he only wanted a resolution to the issues with the strata council. I therefore find that the landlord failed to prove the causes listed on the Notice.

Conclusion

Having found that the landlord has provided insufficient evidence to meet the burden of proof necessary to end a tenancy, **I order the 1 Month Notice to End Tenancy for Cause issued by the landlord on September 1, 2011 be cancelled and this tenancy continues until it may legally end under the Residential Tenancy Act.**

The parties were informed during the hearing that the Residential Tenancy Act does not apply to their issues with the strata council.

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: October 05, 2011.

Residential Tenancy Branch