



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC

Introduction

This matter dealt with an application by the Tenant to cancel a One Month Notice to End Tenancy for Cause dated October 29, 2011.

Issue(s) to be Decided

1. Does the Landlord have grounds to end the tenancy?

Background and Evidence

This tenancy started on December 1, 2010. Rent is \$415.00 per month payable in advance on the 1st day of each month. On October 29, 2011, the Landlord's agent, S.B., served the Tenant in person with a One Month Notice to End Tenancy for Cause dated October 29, 2011. The grounds stated on the Notice were as follows:

- The Tenant is repeatedly late paying rent;
- The Tenant or a person permitted on the property by the Tenant has:
 - Seriously jeopardized the health and safety or lawful right of another occupant or the landlord;
 - Put the landlord's property at significant risk.

The Landlord's agent said the Tenant claimed on his application for tenancy that he did not smoke and therefore did not require a smoking suite. The Landlord's agent said he discussed this at length with the Tenant prior to entering into the tenancy agreement. The Landlord's agent said the tenancy agreement contains a clause that smoking on the premises is a material term, the breach of which is grounds for ending the tenancy. The Landlord's agent said he received a number of verbal and written complaints from another tenant in the rental property claiming that the Tenant was smoking either in his suite or on his balcony. The Landlord said the building manager, F.K., investigated at least one of these complaints in June 2011 and based on her observations she believed the Tenant had been smoking marijuana in the rental unit. Consequently, the Landlord's agent said he served the Tenant a One Month Notice to End Tenancy for Cause on June 22, 2011.

The Landlord's agent said he met with the Tenant the following day and agreed to withdraw the One Month Notice because the Tenant signed an agreement stating that "if smoking on the premises again becomes an issue" the Landlord would end the tenancy. The Landlord's agent said he believed that by signing this document, the Tenant acknowledged that he had been smoking on the rental property. The Tenant denied that he acknowledged to the Landlord that he had smoked in the rental unit or on the rental property and insisted that this never happened.

The Landlord's agent said he received another complaint from the same tenant in the rental property on October 29, 2011 claiming that she or he had witnessed the Tenant smoking on his balcony at approximately 7:00 a.m. that morning. The Landlord's building manager said she did not investigate this complaint. The Landlord's agent claimed that when he attended the rental property at 3:00 p.m. on October 29, 2011 to serve the Tenant with the One Month Notice, he could smell marijuana in the hallway and coming from the rental unit. The Tenant denied that he had been smoking in the rental unit or on his balcony and claimed that he was still in bed at 7:00 a.m. on October 29, 2011. The Tenant argued that if he had been smoking on his balcony as he was alleged to have done, it is unlikely that the odour could have been smelled in the hallway of the rental property 8 hours later.

The Parties agree that the Tenant has a permit to possess marijuana for medical purposes. The Tenant claims that he has no need to smoke marijuana in the rental unit because he can consume it in other ways such as in cooking, in capsules, in teas and so forth. The Tenant also claimed that it is unnecessary for him to smoke in his suite or on his balcony when he can go to his car to do so.

Analysis

In this matter, the Landlord has the burden of proof and must show (on a balance of probabilities) that grounds exist (as set out on the Notice to End Tenancy) to end the tenancy. This means that if the Landlord's evidence is contradicted by the Tenant, the Landlord will generally need to provide additional, corroborating evidence to satisfy the burden of proof.

The Landlord's agent admitted that he agreed to withdraw the One Month Notice to End Tenancy for Cause dated June 22, 2011. The Landlord's agent also admitted that he served the Tenant with the One Month Notice to End Tenancy for Cause dated October 29, 2011 because he received a complaint that the Tenant was smoking in the rental property that day. The Landlord relied on a written witness statement on which the identity of the author had been removed. I find that this statement is of little assistance in this hearing because it is very unreliable. The identity of the witness has been obscured by the Landlord and the witness did not attend the hearing to be questioned on his or her statement. Consequently, there is no way to test the veracity of the

allegations contained in that statement. As a result, I give the Landlord's written witness statement no weight.

The Landlord's agent also claimed that he could detect the smell of marijuana coming from the Tenant's suite on October 29, 2011. However, the Tenant denied this and claimed that he had not been smoking and suggested that any scent of marijuana could have been from the dried supply he had stored in jars. Given the contradictory evidence of the parties on this issue and in the absence of any reliable, corroborating evidence from the Landlord to resolve this contradiction, I find that there is insufficient evidence to support the grounds of the One Month Notice based on smoking.

The Landlord also alleged that the Tenant was repeatedly late paying rent because his pre-authorized rent payments for July, August and October 2011 were returned unpaid. The Tenant provided a letter from his financial institution that stated as follows:

"In reference to the rent paid to [the Landlord] for July 2011 and August 2011. There was a bank error which prevented [the Tenant] from paying on time. We have resolved this error...there were funds available at the time."

RTB Policy Guideline #38 says that "*in exceptional circumstances, for example, where an unforeseeable bank error has caused the late payment, the reason for the lateness may be considered by an arbitrator in determining whether a tenant has been repeatedly late paying rent.*" In the absence of any contradictory evidence from the Landlord, I find that the Tenant's late rent payments in July and August 2011 were the result of bank errors and therefore exceptional circumstances that cannot be considered late payments. Consequently, I find that the Tenant has made only one late payment for the purposes of s. 47(1)(b) and as a result, I find that there is insufficient evidence to support this ground of the One Month Notice.

Conclusion

The Tenant's application is granted. The One Month Notice to End Tenancy for Cause dated October 29, 2011 is cancelled and the tenancy will continue. 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: November 28, 2011.

Residential Tenancy Branch