



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC

Introduction

This hearing was convened in response to an application by the Tenant pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

1. An Order Cancelling a Notice to End Tenancy for Cause (the “Notice”) - Section 47.

The Tenant and Landlord were each given full opportunity to be heard, to present evidence and to make submissions.

Issue(s) to be Decided

Should the Notice be cancelled?

Background and Evidence

The tenancy of a basement unit in a house began on August 1, 2011. The Landlord, who lives above the basement unit, states that during September 2011, what was believed to be marihuana was smelled by the Landlord who then went to the unit to enquire of the daughter of the Tenant whether she was smoking the substance. On a second occasion in September 2011, the Landlord states that the smell was again noticed and when the Landlord went down to the unit, there was a strong smell of perfume or something.

The Tenant states that he believes that smoking marihuana is an extremely serious matter. The Tenant states that he is very strict about the use of marihuana and that he does not believe that his daughter was smoking marihuana in the unit as she has consistently denied such activity to the point where she now is having panic attacks

because of the accusations and pressure from her father. The Tenant states that his other two children, aged 10 and 13 years have also been grilled and have consistently denied that their sister was smoking marihuana. The Tenant states that he himself has been home when he has smelled the odour and does not know where the smell is coming from. The Landlord confirms that his neighbours house are within 10 to 15 feet away and that the previous tenants living in one of those houses did smoke tobacco and did admit to smoking marihuana at one time.

The Landlord states that the smoking of marihuana has significantly interfered with the Landlord and his family as the Landlord believes that it is public knowledge that the smell of marihuana is harmful to human health.

The Landlord states that on September 20, 2011, the Notice was personally served on the Tenant and the Parties confirm that the Notice, with an effective date of October 31, 2011 lists the following cause:

1. The tenant or a person permitted on the property by the tenant has:
 - Significantly interfered with or unreasonably disturbed another occupant or the landlord.

Analysis

Where a Notice to End Tenancy comes under dispute, the landlord has the burden to prove, on a balance of probabilities, that the tenancy should end for the reason or reasons indicated on the Notice and that at least one reason must constitute sufficient cause for the Notice to be valid. Although the Landlord believes that the smell of marihuana is coming from the unit, given the Tenant's evidence of experiencing the smell himself while at home with his children, considering the close proximity of other neighbours who may also smoke marihuana, and remaining aware that the smell of marihuana is commonly known to carry long distances, I find that the Landlord has not proven on a balance of probabilities that the smell of marihuana came from the unit or

was smoked inside the unit by the Tenant or any member of the Tenant's family. Accordingly, I find that the Notice does not have a valid cause and the Tenant is therefore entitled to cancellation of the Notice. As the Tenant has been successful with the application, I find that the Tenant is entitled to recovery of the filing fee and I order the Tenant to reduce the next month's rent payable by the amount of \$50.00.

Conclusion

The Notice is cancelled and the tenancy continues. I order the Tenant to reduce the next month's rent payable by \$50.00.

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 02, 2011.

Residential Tenancy Branch