



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC

Introduction

This hearing was convened by way of conference call in repose to the tenants' application to cancel the One Month Notice to End Tenancy.

The tenants and landlords attended the conference call hearing, gave sworn testimony and were given the opportunity to cross exam each other on their evidence. The landlords and tenants provided documentary evidence to the Residential Tenancy Branch and to the other party in advance of this hearing. All evidence and testimony of the parties has been reviewed and are considered in this decision.

Issue(s) to be Decided

- Are the tenants entitled to cancel the One Month Notice to End Tenancy?

Background and Evidence

Both parties agree that this tenancy started on April 01, 2011. This is a fixed term tenancy for one year and the tenants pay a monthly rent of \$900.00 on the first of each month in advance.

The landlord MB testifies that the tenants were smoking marijuana in their basement suite. The landlord states they live above the tenants and the smell filtered through into the landlords' suite. The landlord testifies that the tenants understood at the start of the

tenancy that this was a no smoking unit as it is documented in their tenancy agreement and the use of any illegal substances is also prohibited. The landlord testifies that the first occurrence was on June 22, 2011. At that time they explained to the tenants that they had broken a material term of the tenancy agreement and it was unacceptable to the landlords. The landlord states the tenant told the landlord it would not happen again so the landlord decided to let it go with just a verbal warning.

The landlord testifies that the next occurrence was on December 04, 2011. The landlord testifies that they walked back into their suite and could smell marijuana again. The landlord testifies that he called the tenants and asked them to come and speak to the landlords. The tenants denied any wrong doing and the landlord states he called the police. The landlord testifies the police arrived and arrested the tenants after investigating their unit and confiscating a bag of Marijuana and a Bong. The landlord states the police told them the tenants were being charged with possession of an illegal substance. The landlord has provided the police file number in evidence.

The landlord testifies that they invited the tenants back later that evening and asked them to sign a mutual agreement to end the tenancy. The landlord states they would not agree to this so the landlords served the tenants with the One Month Notice to End Tenancy. This notice was served to the tenants on December 05, 2011 in person and has an effective date of January 05, 2012. This Notice gives two reasons to end the tenancy as follows:

The tenant or a person permitted on the residential property by the tenant has engaged in illegal activity that has

- (ii) Has adversely affected or is likely to adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant of the residential property, or
- (iii) Jeopardized a lawful right or interest of another occupant or the landlord.

At the hearing the landlord verbally requests an Order of Possession as they feel the tenants' activities will continue and the landlord has a young family. The landlord states they no longer feel comfortable living in their home. The landlord testifies that the police told the landlord that the tenant JB had a history of marijuana trafficking.

The tenant JB testifies that they only admitted to having marijuana on June 22, 2011 but did not tell the landlord that they were smoking it. The tenant testifies that they do smoke marijuana but never in their suite. The tenant states they go elsewhere if they smoke this substance.

The tenant states on December 04, they were not at their suite when the landlord called them to ask them to meet them about smoking marijuana. The tenant states if they were not at home how can the landlord accuse them of smoking marijuana and how could the smell of it enter the landlords suite. The tenant agrees after the landlord called them they came home and they went to speak to the landlords. The tenant also agrees the police did confiscate some marijuana and a Bong from their unit. The tenant testifies that they were arrested but were not charged with an offence. The tenant testifies that he does not have a history of trafficking drugs but agrees he has been arrested for possession previously. The tenant testifies that neither they nor their guests smoke anything in the unit and therefore they seek to have the One Month Notice to End Tenancy cancelled.

Analysis

I have carefully considered all the evidence before me, including the sworn testimony of both parties. I refer the parties to the Residential Tenancy Policy Guidelines # 32 which discusses illegal activities. This guideline states, in part, that In considering whether or not the illegal activity is sufficiently serious to warrant terminating the tenancy, consideration would be given to such matters as the extent of interference with the quiet enjoyment of other occupants, extent of damage to the landlord's property, and the jeopardy that would attach to the activity as it affects the landlord or other occupants.

For example, it may be illegal to smoke a single marijuana cigarette. However, unless doing so has a significant impact on other occupants or the landlord's property, the mere smoking of the marijuana cigarette would not meet the test of an illegal activity which would justify termination of the tenancy.

When a notice of this nature is served to the tenants the landlords have the burden of proof that grounds exist (as set out on the Notice to End Tenancy) to end the tenancy. This means that if the landlords' evidence is contradicted by the tenants, the landlords will generally need to provide additional, corroborating evidence to satisfy the burden of proof.

The tenants have disputed that they were home when the second incident occurred where the landlords have stated they could smell marijuana filtering from the tenants unit and although the tenants were arrested no charges were brought against them for possession of marijuana.

The tenants do not dispute that they had marijuana on the premises but do dispute that they smoke it in their suite. The landlord argues that the smell of marijuana has affected his family and they no longer feel comfortable living in their home. However this alone would not be sufficient to end a tenancy as indicated above. The landlord has not shown beyond a reasonable doubt that the tenants have smoking marijuana in their unit. I also find the landlord has provided insufficient evidence to support their claim that the tenants' actions have had a serious impact on the landlords' life. I would not consider that two incidents (one of which is unproven) six months apart to be a serious infringement of the landlords rights.

Consequently the tenants' application to cancel the Notice to End Tenancy is therefore upheld and the notice is set aside and the tenancy will continue at this time.

However, I would caution the tenants that they now have written notice that a repeat of this behaviour may result in a termination of their tenancy.

Conclusion

The tenant's application is allowed. The one Month Notice to End Tenancy for Cause dated December 05, 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: December 21, 2011.

Residential Tenancy Branch