



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, FF

Introduction

This hearing dealt with an application by the tenants to cancel a notice to end tenancy for cause. Both parties participated in the conference call hearing.

Issue(s) to be Decided

Are the tenants entitled to any of the above under the Act.

Background and Evidence

This tenancy began April 2006 with monthly rent of \$590.00 and the tenants paid a security deposit of \$295.00.

On January 31, 2012 the landlord issued the tenants a 1 Month Notice to End Tenancy for Cause:

- The tenants have adversely affected the quiet enjoyment, security, safety or physical well-being of another occupant or the landlord.
- The tenants have breached a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.

The landlord testified that in December 2011 they received a number of complaints from other tenants in the building who live on the tenant's floor about a strong odour coming from the tenant's rental unit, namely cigarettes. The landlord stated that on January 17, 2012 they sent the tenants a warning letter advising the tenant's to have their rental unit cleaned and that the landlord would conduct an inspection 48 hours later.

The landlord stated that on January 19, 2012 an inspection of the rental unit was completed by two staff members. The landlord stated that the tenant's had attempted to clean the rental unit but that the walls and curtains were yellowed by cigarette smoke. The landlord stated that the tenants also do not open their windows very often and with the build-up of condensation, black mold has started to form on the window frame. The

landlord did acknowledge that the rental unit may be smoked in and the tenant's are not in breach of a term of the tenancy agreement in this regard.

The landlord then on January 31, 2012 sent the tenants a letter with the outcome of the inspection and issued a 1 month notice to end tenancy for cause.

The tenant testified that they do not open their windows very often because of the cold but stated that today she has a window open.

The tenant in this hearing agreed to:

- Get information/assistance for installation of a fan to vent the cigarette smoke out of their rental unit to the outside.
- Get a fan to use inside the rental unit with an open window.
- Open the windows at least 4 times a day to air the cigarette smoke out of the rental unit.
- Place a towel or blanket at the base of the door that leads to the hallway to minimize smoke going into the common hallway.

The landlord stated that the issues had been close to being resolved until a tenant's rights group stepped in and levied a list of complaints against the landlord and upset not only the landlord but the tenants.

Analysis

Based on the documentary evidence and testimony of the parties I find that there is insufficient evidence to uphold the Notice to End Tenancy for Cause.

The onus or burden of proof is on the party making the claim and in this case the landlord has claimed there is cause to end this tenancy and the tenant does not agree. The landlord must prove he has cause to end this tenancy and when one party provides testimony/evidence of the events in one way and the other party provides an equally probable but different testimony/evidence of the events, then the party making the claim has not met the burden on a balance of probabilities and the claim fails.

The landlord's claim in regards to the tenants adversely affecting the peace and quiet enjoyment of others and being in breach because of their conduct for cigarette smoking does not rise to the level where by this tenancy should come to an end.

The tenants are allowed to smoke in the rental unit and have agreed to take steps to minimize or potentially eliminate cigarette smoke from seeping into the common hallway. The tenants would be well advised to also wash the black mold on the window frames with a diluted bleach solution and opening the windows throughout the day will help to minimize not only the cigarette smoke in the building but the black mold growth on the window frame.

I find that the landlord has failed in his burden of proving he has cause to end this tenancy.

Accordingly, the notice to end tenancy is hereby set aside and the tenancy continues in full force and effect.

Conclusion

I therefore allow the tenant's application and set aside the landlord's Notice to End Tenancy for Cause dated January 31, 2012 with the result that the tenancy continues uninterrupted.

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: February 23, 2012

Residential Tenancy Branch