



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 on the tenant's application to have set aside a one-month Notice to End Tenancy for cause served on February 29, 2012 and setting an end of tenancy date of March 31, 2012.

Issue(s) to be Decided

This matter requires a decision on whether the Notice to End Tenancy should be set aside or upheld.

Background and Evidence

According to the rental agreement, this tenancy began on December 1, 2010 although the tenant believes she may have taken occupancy at some other time. The rental unit is operated by the Kiwanis Housing Society and rent is \$350 per month. The landlord holds a security deposit of \$175.

During the hearing, the landlord gave evidence that she had served the Notice to End Tenancy on February 29, 2012 after, when visiting the rental building, she detected a strong smell of marijuana emanating from the subject rental unit. She knocked on the door and advised the tenant that she would be issuing a Notice to End Tenancy for the breach.

She stated that the tenant had conceded the point that she had been smoking the marijuana by saying yes, but the tenant's meaning was an expression of surprise and question.

The landlord stated that she has verbally cautioned the tenant. While she did not see the tenant using marijuana in this instance, she believed that because of the odour and a similar incident in April of 2011, she was quite certain it was from the subject tenant's rental unit.

In both the April 2011 incident and the February 29, 2012 incident the landlord notified police.

The tenant stated that she had not smoked marijuana on either occasion and that she believes that the odour came from another unit and was attributed to her in error.

Analysis

Section 47(1)(e)(ii) of the *Act* provides that a landlord may issue a Notice to End Tenancy for cause in circumstances in which the tenant has engaged in an illegal activity that 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."

Residential Tenancy Police Guideline 32 advises 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."

In the present matter, I find that there is some doubt as to whether the subject tenant was responsible for the marijuana odour and the extent it interfered with other tenants in the incident in question. In addition, I am influenced by the assurance of the tenant that neither she nor any guests will smoke marijuana in the rental unit.

Therefore, I find that the Notice to End Tenancy of February 29, 2012 is set aside.

Conclusion

The Notice to End Tenancy of February 29, 2012 is set aside and the tenancy continues.

The tenant is cautioned that this matter would be taken into consideration if there were to be any further incidents of a similar nature and could possibly result in an end to the tenancy.

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: March 23, 2012.

Residential Tenancy Branch