



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 response to an application made by the tenants for an order cancelling a notice to end tenancy for cause.

The named landlord attended the conference call hearing and acted as agent for the named landlord company. The landlord gave affirmed testimony, called one witness, and provided evidence in advance of the hearing to the Residential Tenancy Branch and to the tenants. Both tenants also attended assisted by an agent, however, only one of the tenants testified. The tenants also provided evidence in advance of the hearing to the Residential Tenancy Branch and to the landlords, and the parties were given the opportunity to cross examine each other and the witness on the evidence provided and testimony given, all of which has been reviewed and is considered in this Decision.

Issue(s) to be Decided

Are the tenants entitled to an order cancelling a notice to end tenancy for cause?

Background and Evidence

The landlord testified that this fixed term tenancy began on September 1, 2005 and the tenants still reside in the rental unit. Rent in the amount of \$751.30 per month is payable in advance on the 1st day of each month and there are no rental arrears. At the outset of the tenancy the landlords collected a security deposit from the tenants in the amount of \$350.00 which is still held in trust by the landlords.

The landlord further testified that the tenants were personally served with a 1 Month Notice to End Tenancy for Cause on either April 29 or April 30, 2012 by handing the document to one of the tenants. The landlord testified that the notice was dated either April 29th or 30th, 2012 and contains an effective date of vacancy of the end of May, 2012. The landlord did not provide a copy of the notice, but testified that there were 3 reasons for issuing the notice checked off on page 2 of the form: the tenant has adversely affected the quiet enjoyment, security, safety or physical well-being of another

occupant or the landlord; jeopardized a lawful right or interest of another occupant or the landlord; and breach of 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 the tenant smoked marihuana in the rental unit.

The landlord testified that in March, 2010 the landlord told the tenant smoking marihuana was not permitted and the tenant claimed to have a permit. The landlord asked for a copy but the tenant refused to provide it and continued to smoke marihuana in the rental unit.

On January 16, 2011 the landlord posted a notice to the door of the rental unit, and others on September 5, 2011, October 23, 2011, November 6, 2011, and November 21, 2011. Other notices were also left for the tenant and all, or almost all, were posted to the door of the rental unit. Copies of the notices were provided for this hearing. The landlord further testified to receiving complaints from other tenants, and provided copies of those written complaints for this hearing. The landlord also spoke to the tenant several times. After the tenant received the notice to end tenancy, the tenant went to the landlord's office crying with a copy of the card permitting smoking the substance and told the landlord that it wouldn't happen again. The landlord did not take a copy of the permit.

The landlord further testified that no drug related activity is permitted on the site, and such activity is a material term of the tenancy, although the landlord was not able to provide what exactly the tenancy agreement states with respect to that activity and did not provide a copy of the tenancy agreement for this hearing.

The landlord's witness testified that there is no addendum to the tenancy agreement. The witness is also an employee of the landlord company, and stated that it's common sense that it would be a material term to not smoke marihuana in a rental unit.

The witness completed an inspection of the rental unit on May 8, 2012 and testified that marihuana was not smelled or seen during that inspection.

One of the tenants testified that the tenancy did not start in 2005, but on August 1, 2007.

The tenant also testified that only some of the notices or letters described by the landlord were received by the tenant and none prior to April, 2012. The tenant does not hold a permit for marihuana, the document the landlord was referring to is a card member, not a permit. The tenant did not have a discussion with the landlord indicating

that the tenant would stop smoking marihuana; the tenant does not smoke marihuana in the rental unit. Further, the tenant denies that a conversation took place between the landlord and the tenant with respect to complaints by other tenants.

Analysis

The *Residential Tenancy Act* sets out the responsibilities for landlords and tenants, and the Branch has published Policy Guidelines to assist landlords and tenants with some disputes that can arise in tenancies. One of the Policy Guidelines deals with smoking marihuana, in part. It states 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 marihuana cigarette. However, unless doing so has a significant impact on other occupants or the landlord’s property, the mere smoking of the marihuana cigarette would not meet the test of an illegal activity which would justify termination of the tenancy.”

In all cases the onus is on the landlord to prove the extent of interference the activity has on the quiet enjoyment of other occupants. Also, the landlord has a responsibility to ensure that other occupants are provided with their right to quiet enjoyment.

In this case, the tenant denies smoking marihuana in the rental unit. The landlord has provided copies of notices posted to the door of the rental unit, however the tenant denies that most of them were ever received. The landlord has also testified that the tenant was spoken to, which is also denied by the tenant. The landlord called a witness who testified that the tenancy agreement does not contain any reference to “illegal activity” or smoking marihuana in the rental unit, nor is there an addendum to the tenancy agreement. The witness also inspected the rental unit and did not smell or see any marihuana, but the witness stated, “It’s common sense.” Therefore, I fail to see how this issue can be a material term of the tenancy, as indicated on the notice to end tenancy issued by the landlord.

As per the policy guideline mentioned above, the onus is on the landlord to satisfy the director that the landlord has met the test of an illegal activity which would justify terminating the tenancy. The test is the extent of interference with the quiet enjoyment of other occupants and that it adversely affects the quiet enjoyment of another

occupant. I have reviewed the letters of other tenants that were provided by the landlord. The first states that, "Because of the tenants safety, this is an important issue that has to be investigated ASAP and find a solution for that." Nothing in the letter states what the safety issue is or that it has interfered with that tenant's tenancy. Another tenant's letter states that the tenant invited smoking marihuana, but no mention of how it has affected the tenant or the tenant's tenancy. The same tenant provided another letter to the landlord about the smell in the hallway, but it simply says that the tenant wanted management to be aware of the situation, not how it affects the tenant or the tenancy. The only other letter provided by the landlord is from a tenant who complains about disturbances from neighbours and that women scream too much. I take that to be other tenants in general, and certainly not an illegal activity which would justify termination of this tenancy.

I do accept the testimony of the landlord that the tenant has smoked marihuana in the rental unit due to the fact that the tenant is a "card carrying member" of some sort. However, I cannot find in the evidence before me that the landlord has satisfied the test of proving significant impact on other occupants or the landlord's property. Further, I have no evidence to satisfy me that the activity has jeopardized a lawful right or interest of another occupant or the landlord. The landlord has merely provided evidence to satisfy me that other tenants have noticed the smell, not that it has adversely affected or jeopardized those tenancies.

Conclusion

For the reasons set out above, the notice to end tenancy is hereby cancelled.

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: May 23, 2012.

Residential Tenancy Branch