



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC

Introduction

This hearing dealt with an application by the tenant for an order setting aside 2 notices to end this tenancy. Both parties participated in the conference call hearing.

Issue to be Decided

Should the notices to end tenancy be set aside?

Background and Evidence

The rental unit is one of three units in a building in which tenants share a common bathroom on the second floor. The landlord resides in a fourth unit on the ground floor, across from the rental unit. The landlord served on the tenant 2 identical notices to end tenancy for cause, the first on April 2 and the second on April 20. The notice alleges that the tenant has seriously jeopardized the health or safety of another occupant or the landlord and has put the landlord's property at significant risk and that the tenant has engaged in illegal activity that has or is likely to adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant or the landlord and jeopardized a lawful right or interest of another occupant or the landlord. The notices also had the box checked to indicate that the tenant was repeatedly late paying rent, but at the hearing the landlord testified that the box was checked in error and late payment was not an issue.

The landlord testified that when the tenant moved into the unit in January 2012, he did not reveal that he had a disability and she does not wish to assume the risk of having a disabled person living in her home. She stated that when the tenant uses the washroom on the second floor, he has to use a flight of stairs and she is very concerned that he will fall. She further testified that the tenant, along with other occupants of the building, are responsible for cleaning up after themselves after they use the bathroom, but that the tenant has failed to clean. She acknowledged that she has not had complaints from other tenants, but testified that she is unable to rent a vacant unit in the

building because she is concerned that prospective tenants will not want to share the washroom with the tenant because he does not adequately clean.

The tenant testified that although he has mobility issues, he has no difficulty negotiating the stairs and stated that he always stays to the side of the staircase to allow others to pass him. He testified that he always uses Tilex to spray the bath and shower curtain after use.

The landlord further testified that she suffers from an extreme sensitivity to fragrances and that the tenant uses cleaning and personal hygiene products that cause her to have an allergic reaction.

The tenant responded that the landlord has not made him aware of this sensitivity and emphasized that he has not been given warnings or notice of any objectionable activity or odours.

Analysis

The landlord bears the burden of proving that she has grounds to end the tenancy. The landlord provided no evidence whatsoever that the tenant was engaged in any illegal activity, nor did she provide any evidence showing that the tenant has placed the property at significant risk.

Addressing the remaining allegation, that the tenant has seriously jeopardized the health or safety of another occupant or the landlord, I am unable to find that the tenant's mobility issues pose any risk to the health or safety of others. If the tenant is not cleaning up after himself in the bathroom, and I make no finding on that issue, there is no evidence that it affects the health or safety of others.

I accept that the landlord is sensitive to odours and fragrances, but I see no evidence that she made the tenant aware of this sensitivity at the outset of the tenancy, nor is there evidence that there is an agreement between the parties that the tenant will restrict his use of certain fragrances or cleaning products. The tenant indicated a willingness to work cooperatively with the landlord to minimize fragrances and as the tenant was unaware of the landlord's medical issues prior to the hearing, I find that the landlord's reaction to fragrances is not sufficient grounds to end the tenancy.

For these reasons, I order that the notices to end tenancy dated April 2 and April 20 be set aside and of no force or effect. As a result, this tenancy will continue.

Conclusion

The notices to end tenancy are set aside.

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 03, 2012

Residential Tenancy Branch