

DECISION

Dispute Codes:

CNC, MNDC, OLC, FF

Introduction

The tenants applied to cancel a Notice to End Tenancy for Cause, compensation for damage or loss under the Act, orders the landlord comply with the Act and to recover filing fee costs from the landlord.

Both parties were present at the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained, evidence was reviewed and the parties were provided with an opportunity to ask questions about the hearing process. They were provided with the opportunity to submit documentary evidence prior to this hearing, all of which has been reviewed, to present affirmed oral testimony and to make submissions during the hearing. I have considered all of the evidence and testimony provided.

Preliminary Matters

The tenants indicated several matters of dispute on their application and confirmed that the main issue to deal with during this proceeding is the Notice to End Tenancy. For disputes to be combined on an application they must be related. Not all the claims on this application were sufficiently related to the main issue to be dealt with together. Therefore, I dealt with the tenant's request to set aside or cancel the Notice to End Tenancy for Cause and I dismiss the balance of the tenant's claim with liberty to re-apply.

Issue(s) to be Decided

Should the 1 Month Notice to End Tenancy for Cause issued on May 22, 2012, be cancelled?

Are the tenants entitled to filing fee costs?

Background and Evidence

The landlord and the tenant agree that a 1 Month Notice to End Tenancy for Cause was served on the tenants indicating that the tenants are required to vacate the rental unit on June 29, 2012.

The reasons stated for the Notice to End Tenancy were that the tenants have engaged in illegal activity that has, or is likely to:

- Damage the landlord's property;
- adversely affect the quiet enjoyment, security, safety or well-being of another occupant;
- jeopardize a lawful right or interest of another occupant or the landlord; and
- that the tenants breached a material term of the tenancy that was not corrected within a reasonable time.

The tenancy commenced on April 30, 2012. Rent is \$1,180.00, due on the 30th or 31st of each month. Rent includes hydro payment. A security deposit in the sum of \$500.00 and pet deposit of \$400.00 was paid. A copy of the tenancy agreement was supplied as evidence.

The landlord resides above the tenant's unit; another occupant resides in a unit below the tenants.

The addendum to the tenancy agreement includes a clause that smoking of any substance is not permitted on the property; guests may smoke cigarettes outside, and that smoking illegal substances will not be allowed.

The landlord submitted that the tenants have been causing a bad odor to emanate from their suite and that this odor is affecting her well-being.

The landlord issued the following letters to the tenants:

- May 2, 2012 note taped to the tenant's gate complaining of an odour and providing laundry instructions and that they use their fans and open doors as she and her cat have trouble breathing;
- May 10, 2012, mentions a problem 3 years previous with marijuana smoking in her building and that the smell must be from smoking marijuana, the note indicated the landlord would carry out monthly inspections; and
- May 25, 2012, again complaining of bad odors and bad air, possibly from marijuana smoke, that she knows they are smoking, but this is hard to believe.

The letters also outlined other requests; that the tenants not use the back door at night.

The May 25, 2012, letter stated:

"I will give you another chance to prove that you do not smoke marijuana in my building. If the odor returns at all,(and I can still detect the odor no matter what mask is used including the barbecue), I have no choice except to give you another notice."

On May 11, 2012, the tenants called the landlord asking her to come to the suite, so she could establish for herself that they were not smoking in the unit; the landlord declined.

The landlord stated she was afraid of the tenants.

On May 18, 2012, at 9:15 p.m. the landlord called the tenants and asked the male tenant if he was smoking marijuana. Again, the landlord was asked to come to the unit to check it for herself, but she declined. The tenants submit the landlord began to yell and that they must stop; she then hung up. Attempts made to call the landlord back were unsuccessful and the landlord had locked the gate to her unit. The tenants then had the occupant of the lower unit come to their home to see if she could smell anything; she could not.

Both parties confirmed that an occupant of a neighbouring property smokes marijuana; the landlord agreed that she has smelled this before, but that the current problem is caused by the tenants.

The tenants submit they do not smoke marijuana; they want to move from the unit, but need time to save money before they can give proper notice ending the tenancy.

The landlord requested possession of the unit.

Analysis

After considering all of the written and oral evidence submitted at this hearing, I find that the landlord has provided insufficient evidence in support of the reasons given on the Notice. Further, I find that on May 25, 2012, the landlord effectively reinstated the tenancy and cancelled the Notice, by telling the tenants, in writing, that she would give them another chance.

In relation to the allegations made by the landlord, she must be cautioned that the tenants are entitled to the quiet enjoyment of their home. The landlord has not taken any steps to investigate the allegations she is making; she has refused to enter the home when the tenants have offered her access; a visit that could easily dispel the landlord's belief that the tenants are smoking in the unit. I found this refusal, in the absence of any evidence the tenant's are threatening to the landlord, failed to support the reasons given on the Notice.

The tenant stated that they would welcome the landlord into their unit at any time, within reason, when she believes they are smoking. The landlord stated the occupant living below the tenants does not wish to be involved; yet I found the submission that this person had gone to the unit believable.

Therefore, the Notice to End Tenancy for Cause issued on May 22, 2012, is of no force and effect.

As the Notice is cancelled I find that the tenant's may deduct the \$50.00 filing fee from the next month's rent owed.

I have appended section 29 of the Act to this decision. The parties may reach a mutual agreement for entry; or the landlord may issue written notice of entry, as provided by the Act.

Conclusion

The Notice to End Tenancy for Cause issued on May 25, 2012, is of no force or effect. The tenancy shall continue until it is ended as provided by the Act.

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: June 18, 2012.

Residential Tenancy Branch

Landlord's right to enter rental unit restricted

29 (1) *A landlord must not enter a rental unit that is subject to a tenancy agreement for any purpose unless one of the following applies:*

- (a) the tenant gives permission at the time of the entry or not more than 30 days before the entry;*
- (b) at least 24 hours and not more than 30 days before the entry, the landlord gives the tenant written notice that includes the following information:*
 - (i) the purpose for entering, which must be reasonable;*
 - (ii) the date and the time of the entry, which must be between 8 a.m. and 9 p.m. unless the tenant otherwise agrees;*
- (c) the landlord provides housekeeping or related services under the terms of a written tenancy agreement and the entry is for that purpose and in accordance with those terms;*
- (d) the landlord has an order of the director authorizing the entry;*
- (e) the tenant has abandoned the rental unit;*
- (f) an emergency exists and the entry is necessary to protect life or property.*

(2) A landlord may inspect a rental unit monthly in accordance with subsection (1) (b).