



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC and FF

Introduction

This hearing was convened on the tenant's application of May 10, 2012 to have set aside a Notice to End Tenancy for cause dated May 7, 2012 and setting an end of tenancy date of June 30, 2012. The tenant also sought to recover the filing fee for this proceeding from the landlord.

Issue(s) to be Decided

This matter requires a decision on whether the Notice to End Tenancy should be set aside or upheld and whether the tenant is entitled to recover the filing fee from the landlord.

Background and Evidence

This tenancy began on May 15, 2008. Rent is currently \$465 per month and the landlord holds a security deposit of \$200.

During the hearing, the landlord gave evidence that the Notice to End Tenancy had been served after the tenant had been sent a warning letter on December 22, 2011 stating that strong tobacco odours indicated the tenant was smoking in the rental unit. The letter warned that such conduct breached a material term of the rental agreement and could result in an end to the tenancy.

When the odours remained strong and apparently on the basis of complaints from other tenants, no record of which was submitted into evidence, the landlord served the Notice to End Tenancy for cause of May 7, 2012.

The tenant stated that he had not smoked in the rental unit and submitted that he believed the odours, to which he had become desensitized, has been imbedded in his furnishings, drapes and clothing from his previous home in which he and his late wife had both smoked. He stated that he now smokes only on his patio and designated smoking areas on the property.

The landlord's friend who manages another rental unit stated that he would assist the tenant with removal of the odours, including employing an ozone generator which he uses in his own building.

Consent Agreement

The landlord agreed to withdraw the Notice to End Tenancy on the tenant's promise that he:

1. Would proceed with cleaning of draperies and furnishing in addition to application of the ozone generator as his friend and witness promised;
2. Smoke only in designated smoking areas, including a soon to be announced gazebo to replace patios as designated smoking areas;
3. Remove a sweep from his entry door (which the landlord believes was placed there to contain smoke but which the tenant said was intended to reduce a cross draft);
4. Consent to a follow up inspection in one month to permit the landlord to take measure of the success of efforts to reduce the tobacco odours and confirm that the tenant has not smoked in the rental unit.

The parties are commended for their cooperation in crafting a fair and reasonable agreement to resolve this dispute.

Conclusion

The Notice to End Tenancy of May 7, 2012 is withdrawn on the tenant's assurances recorded herein.

The landlord is at liberty to issue a new Notice to End Tenancy if the tenant does not fulfill their consent agreement.

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 01, 2012.

Residential Tenancy Branch