



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC

Introduction

This hearing dealt with an Application for Dispute Resolution by the tenant to cancel a one month notice to end tenancy for cause issued on September 17, 2012.

Both parties appeared, gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions to me.

In a case where a tenant has applied to cancel a notice for cause Residential Tenancy Branch Rules of Procedure require the landlord to provide their evidence submission first, as the landlord has the burden of proving cause sufficient to terminate the tenancy for the reasons given on the notice.

I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure. I refer only to the relevant facts and issues in this decision.

Issue(s) to be Decided

Should the notice to end tenancy issued on September 17, 2012, be cancelled?

Background and Evidence

The parties agree that a one month notice to end tenancy for cause was served on the tenant indicating that the tenant is required to vacate the rental unit on October 31, 2012.

The reason stated in the notice to end tenancy was that the tenant has:

- Seriously jeopardized the health or safety or lawful right of another occupant or the landlord.

The landlord testified that the tenant is grandfather to allow smoking in her unit. However, since May 2012, they have had an ongoing problem with the strong smell of marijuana coming from her unit and receiving complaints from other occupants in the senior complex that it was jeopardizing their health and their rights to quiet enjoyment.

The landlord testified to address the problem they posted general warnings on the tenant's floor in hopes that the tenant would cease using marijuana on the property. However, they continued to receive complaints from other occupants that the tenant was continuing to smoke marijuana. As a result of those complaints the tenant was served with warning letters on August 3, 2012, and August 13, 2012. The landlord stated the tenant did not respond to those letters.

The landlord testified after August 13, 2012, they continued to receive further complaints that the tenant was smoking marijuana. As a result, on August 15, 2012, the tenant was served with a final warning, which notified the tenant any further complaints would result in an eviction notice. The landlord stated after that final warning the tenant produced a license to possess marijuana. However, the license does not give the tenant the right to jeopardize the health of other occupants or their rights to quiet enjoyment.

The landlord testified it appeared the tenant was complying with the final warning letter, however, it was discovered through the complaint log book that they received a further complaint on August 31, 2012. As a result of this complaint the tenant was served with a one month notice to end tenancy for cause.

The witness for the landlord testified as a result of the tenant smoking marijuana it is putting her health at jeopardy as the marijuana smell is entering into her unit and causing her respiratory problems and the loss of quiet enjoyment. The witness stated on August 31, 2012, after the final warning, the tenant was smoking marijuana and it was not possible for the smell to be coming from any other unit.

The tenant testified that she has had a license to possess marijuana for medical purposes since November 2011, and felt that she was not obligated to disclose that license to the landlord even after receiving the first two warning letters. However, after receiving the third warning letter, she provided the landlord with a copy of that license.

The tenant testified that she has not smoke marijuana in the unit, since the last warning letter and believes the smell of marijuana may have been coming from another unit as there are other occupants that are also smoking marijuana.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

After considering all of the written and oral submissions submitted at this hearing, I find that the landlord has provided insufficient evidence to show that the tenant has:

- Seriously jeopardized the health or safety or lawful right of another occupant or the landlord

In this case, the tenant is legally entitled to possess marihuana for medical purposes, by a federal license that was issued in November 2011. That license is renewable yearly. While the tenant is entitled to smoke in her unit and marihuana smoking may not be a material breach of that agreement. Smoking does not give the tenant the exclusive right where it seriously jeopardized the health or safety or lawful right of another occupant or the landlord.

The evidence of the landlord's witness was the smell of marihuana is entering her unit and causing her respiratory problems. However, there was no medical evidence submitted which would support the actions of the tenant is seriously jeopardizing her health such as a medical letter. That letter would have to include the medical reasons why the marihuana smell is having a greater impact on her health over the smell of cigarettes. Therefore, the landlord has failed to prove the tenant has seriously jeopardized the health of an occupant or landlord.

There was no evidence submitted by the landlord that would indicate there are any serious safety concerns, or any history of safety concerns. Therefore, the landlord has failed to prove the tenant has seriously jeopardized the safety of an occupant or landlord.

Under the Act, all occupants in the building are entitled to quiet enjoyment. It is the landlords and the tenants responsibly to take steps to address the problem. While the landlord made attempts to discuss the situation with the tenant, those attempts were disregarded by the tenant. It was not until the final warning letter putting the tenants tenancy at risk that a discussion took place and the tenant was no longer going to smoke marihuana, were it had an impact on other occupants of the building.

The evidence of the landlord was the situation appeared to have corrected itself, however, later he noticed in the complaint log book that there was another complaint

on August 31, 2012, and because of that complaint a notice to end tenancy was issued on September 17, 2012 to the tenant. The tenant denies smoking marihuana on August 31, 2012.

If the issue was so serious that it was jeopardizing the lawful rights of another occupant, I find that it was the landlord's responsibility to properly investigate the complaint on the date of the incident to ensure the legitimacy of the complaint. It was also the landlord's responsibility to inspect the complainant's unit to verify that the marihuana smoke is significantly interfering with her rights to quiet enjoyment. A mere smell does not justify the loss of quiet enjoyment. Therefore, the landlord has failed to prove the tenant has seriously jeopardized lawful rights of an occupant or landlord.

Therefore, I grant the tenant's application to cancel the one month notice to end tenancy issued on September 17, 2012. The tenancy will continue until legally ended in accordance with the Act.

The tenant should be aware if she continues to smoke marihuana and the landlord can prove that those actions are impacting other occupant's health, safety or lawful rights the landlord may have grounds to end tenancy. The tenant may wish to speak to her medical practitioner for an alternate method of administering the drug, where the drug will have no impact on the other occupants in the building.

Conclusion

The tenant's application to cancel the one month notice to end tenancy for cause is granted. The tenancy will continue until legally ended in accordance with 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: October 24, 2012.

Residential Tenancy Branch