



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Belmont Properties
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC

Introduction

This hearing dealt with an application by the tenants to cancel a notice to end tenancy for cause. The two tenants and two agents for the landlord participated in the teleconference hearing.

At the outset of the hearing, each party confirmed that they had received the other party's evidence, aside from additional evidence that the tenant faxed to the landlord and the Residential Tenancy Branch today. As I had not received this evidence prior to the hearing, I did not admit it. Neither party raised any issues regarding service of the application or the other evidence. I have reviewed all testimony and other admissible evidence. However, only the evidence relevant to the issues and findings in this matter are described in this decision.

Issue(s) to be Decided

Is the notice to end tenancy valid?

Background and Evidence

On March 20, 2013, the landlord served the tenant a notice to end tenancy for cause. The notice indicates that the reason for ending the tenancy was 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.

The landlord stated that they have had several talks with the tenant about smoking cigarettes and marijuana in her rental unit. On January 8, 2013 the landlord sent the tenant a letter asking her to stop smoking cigarettes in her unit, and to stop smoking marijuana anywhere in the building or on the premises. The tenant said that she stopped smoking marijuana in her unit on January 7, 2013, but the landlord continued to

receive complaints from other tenants about the smells of cigarette and marijuana smoke. The landlord sent the tenant a second warning letter on February 20, 2013. The landlord still received further complaints, including complaints about the smell of marijuana smoke. The resident manager stated that she has smelled marijuana in the parking, the hallways and the elevator, and she noted that it smelled stronger on the tenant's floor of the building. The landlord stated that two tenants have moved out because of the tenant's persistent smoking, and two more have threatened to do so. The resident manager stated that she believed no one else in the building smokes in their rental unit.

The tenant's response was that she has not smoked marijuana in, on or anywhere near the property since January 7, 2013. The tenant stated that her tenancy agreement does not prohibit smoking. The tenant submitted a letter of support from another tenant on her floor, who indicated that she only smelled the tenant's cigarette smoke once, when the tenant had her unit door open for some time. The tenant stated that because the landlord has blacked out the names of the other tenants who provided complaint letters, the tenant has not been able to deal with the problem. The tenant stated that she has seen other tenants smoking on their balconies.

Analysis

I find that the landlord has failed to provide sufficient evidence to support the notice to end tenancy. Specifically, the landlord failed to establish that the tenant was engaging in illegal activity, smoking marijuana, at the time that the notice to end tenancy was served. The landlord did not have any of the complaining occupants appear as witnesses to give direct testimony and be available for cross-examination by the tenant. I accept the testimony of the resident manager that she smelled the odour of marijuana that may in fact have come from the tenant; however, the smell of marijuana alone does not establish that the tenant was engaged in smoking marijuana on the rental property. As there is insufficient evidence to support the alleged cause, the notice is cancelled.

Conclusion

I cancel the notice to end tenancy dated March 20, 2013, with the effect that the tenancy continues.

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: April 22, 2013

Residential Tenancy Branch

