



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding HOMELIFE GLENAYRE REALTY
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes: CNC LRE OPC FF

Introduction

This hearing dealt with an application by the tenant pursuant to the Residential Tenancy Act (the Act) for orders as follows:

- a) To cancel a notice to end tenancy for cause pursuant to section 47;
- b) To set limits on the landlord's right to enter the rental unit pursuant to section 29; and
- c) To recover their filing fee for this application.

Service:

The Notice to End Tenancy is dated April 26 to be effective May 31, 2013 and the tenant confirmed it was served personally on them. The tenant /applicant gave evidence that they personally served the Application for Dispute Resolution and the landlord agreed they received it. I find the documents were legally served for the purposes of this hearing.

Issue(s) to be Decided:

Has the landlord proved on the balance of probabilities that there is sufficient cause to end the tenancy or has the tenant demonstrated that the notice to end tenancy for cause should be set aside and the tenancy reinstated? Is the landlord entitled to an Order of Possession if the tenant is unsuccessful in the application?

Background and Evidence

Both parties attended the hearing and were given opportunity to be heard, to provide evidence and to make submissions. The undisputed evidence is that the tenancy commenced on May 1, 2012. The landlord served a Notice to End Tenancy for the following reasons:

- a) The tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord; and
- b) The tenant has engaged in illegal activity that jeopardizes the lawful right or interest of another occupant or the landlord.

The landlord said the problem is that the tenant's activities in the unit are causing the whole building to reek of marijuana smell. He provided a warning letter that was sent to the tenant concerning this. The building manager said that when they did inspections as a result of complaints about the smell on that floor, the reek of marijuana from the tenant's unit was so strong that it caused an allergic reaction to it; she said another tenant had threatened to leave because of this smell. The property manager also noted photographs taken of marijuana in a bucket and fertilizer in a freezer in the tenant's unit and said the tenant had been observed drying plants on his balcony. The landlord requests an Order of Possession if the tenant is unsuccessful.

The tenant alleges that the Notice should be set aside because he is not doing anything illegal; he provides a medical marijuana license as proof. He said he does not have a grow op in his unit, the photo of the bucket shows only bits and pieces given to him from which he makes oil to use and he does not do it often. He said most of the smell comes from a house next door.

After discussion, the parties agreed to settle on the following terms:

Settlement Agreement:

The parties agree to part on amicable terms on June 30, 2013 and the landlord will receive an Order of Possession for that date.

On the basis of the documentary and solemnly sworn evidence presented for the hearing, a decision has been reached.

Analysis:

As discussed with the parties in the hearing, the onus is on the landlord to prove on a balance of probabilities that they have good cause to evict the tenant.

I find the evidence of the landlord credible and I prefer it to the evidence of the tenant in respect to the smell originating from the tenant's unit significantly disturbing the peaceful enjoyment of other tenants in the building. While I accept that the tenant is not doing anything illegal as he has a license to possess marijuana, I find that the license does not give him the right to inflict the results of his using marijuana or making oil on other tenants in the building or on the landlord. I find the weight of the evidence is that it is causing others significant disturbance. For these reasons, I dismiss the application of the tenant to cancel the Notice to End Tenancy. I find the tenancy is terminated on May 31, 2013 but an Order of Possession will be effective on June 30, 2013 as agreed by the parties. I find the landlord is entitled to collect rent for "use and occupation only" while the tenants continue to live there and if collected with these limiting terms, it would not reinstate the tenancy.

I find the landlord has the right to enter the tenant's unit for inspection in conformance with the conditions set out in section 29 of the Act and on at least 24 hours written notice unless there is an emergency. I decline to set further conditions on the landlord's right of entry as the tenancy is at an end.

Conclusion:

The Application of the Tenant to set aside the Notice to End Tenancy is dismissed. The tenancy is at an end on May 31, 2013. An Order of Possession is issued to the landlord effective June 30, 2013 as agreed by the parties. No filing fee is awarded to the tenant as he was unsuccessful.

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 24, 2013

Residential Tenancy Branch

