



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC

Introduction

This hearing was convened on an application by the tenant seeking to have set aside a Notice to End Tenancy for cause dated April 21, 2013 and setting an end of tenancy date of June 30, 2013.

Issue(s) to be Decided

Should the Notice to End Tenancy be set aside or upheld?

Background and Evidence

According to the parties, this tenancy was in place when the landlord purchased the rental building approximately 10 years ago and the tenant believed she had moved in during the previous year. Rent is \$500 and the parties were not aware if there was a security deposit.

While the application was made by the tenant, as it contested a Notice to End Tenancy, standard procedure is to ask the landlord to lead evidence as to why the notice was issued and the burden of proof falls to the landlord.

In the present matter, the landlord stated that, while the tenancy has had a number of difficulties, a final incident prompting him to issue the notice was evidence that the tenant had represented herself to another tenant as a source for marijuana.

That evidence came in the form of a recorded telephone conversation, initiated by the tenant. In the telephone call, the tenant advises the landlord that, even though she believes the tenancy will be ending shortly by consent, she is calling in response to landlord's formerly expressed wishes that she inform him of any undue events in the rental building. She said that she wanted the landlord to know that the upstairs tenant was a frequent user of marijuana. She said she had confirmed that fact by offering the other tenant, at his unit, a joint provided to her by a visiting friend, and invited him to contact her if he needed more. She said that on observing the other tenant's unit, there were obvious signs of marijuana use.

The tenant stated during the hearing, that she had later advised the landlord that what she offered the other tenant was catnip.

The landlord stated that there had been numerous police calls to the rental unit, but the tenant stated there had not been a single one.

The landlord stated that some other tenants had threatened to end their tenancies because of the subject tenant, but the tenant said at least three of the other five tenants had assured her they had no issues with her tenancy.

The landlord stated that he had thought they had arrived at a mutual agreement to end the tenancy, but the effort had failed. He said he had not provided corroborating evidence from other tenants because he did not want to involve them. He said he had attempted to obtain a record of police calls, but had been refused for freedom of information reasons.

The tenant denied having done anything illegal or to having disturbed other tenants and noted that during the 10 years she has been with the present landlord, she had never been issued with a warning letter.

Analysis

Section 47(1)(e) of the Act provides that a landlord may issue a one-month Notice to End Tenancy for cause in circumstances, among others, in which:

"the tenant or a person permitted on the residential property by the tenant has engaged in illegal activity that

(ii) has adversely affected or is likely to adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant of the residential property..."

In the present matter, I must note that the report submitted by the landlord was initiated by the tenant herself, quite possibly to ingratiate herself to the landlord, in the face of his expressed wish to end her tenancy.

While I appreciate the landlord's wish not to trouble other tenants, I am left with no evidence to show how the alleged illegal act adversely affected the quiet enjoyment, security, safety or well being of other occupants.

In addition, given that this has been a long term tenancy, and the landlord has submitted no copies of letters to the tenant cautioning her on any of the conduct leading to the Notice to End Tenancy, I must grant the benefit of the doubt to the tenant.

Accordingly, I find that the Notice to End Tenancy of April 21, 2013 is set aside.

Conclusion

The Notice to End tenancy is set aside and 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: May 24, 2013

Residential Tenancy Branch

