



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC

Introduction

The tenant applies to cancel a one month Notice to End Tenancy dated May 24, 2013 to be effective June 30, 2013.

Issue(s) to be Decided

Does the relevant evidence presented at hearing show, on a balance of probabilities, that the tenant has engaged in conduct entitling the landlord to terminate her tenancy?

Background and Evidence

The rental unit is a one bedroom apartment in a twelve unit apartment building. The tenancy started in May 2012.

The tenant suffers from a medical condition that is treated or improved by the ingestion of marijuana. She has, she says, a lawful permit to possess marijuana.

She has, on occasion, smoked her marijuana in her apartment. It is apparent from the signed statements of at least five other tenants in the building and the onsite manager that the marijuana smoke is disturbing other tenants. In some cases it is making other tenants sick. Mr. D.L. reports that the marijuana smoke from the tenant's apartment gives him bad headaches and prevents him from sleeping. Ms. C. across the hall reports that the smoke on the night of May 23rd caused him to be up all night "sick and pucking (*sic*)."rd Mr. C. reported the smoke made him sick. Mr. J.C. stated that he has

smelled pot going through the vents in the building “on numerous occasions” and that he is allergic to the smell of pots; the smell can give him seizures. Ms. D.J. states that the strong odour of marijuana in the hallway makes her nauseous.

The landlord accepts that the tenant has a medical permit to possess marijuana. However, there is little the landlord can do to accommodate the tenant’s desire to burn it and inhale it in the building. Each apartment has vents and the smoke from the tenant’s apartment travels through them. The tenant has been warned by the police not to smoke near the doorways as it is, apparently, a public offence of some kind. She cannot afford a vaporizer which, I understand, emits less smoke.

The tenant says she has been relegated to smoking in her car but does not always do so.

The evidence shows there were a series of smoke disturbance incidents leading to a prior Notice to End Tenancy. That Notice was set aside on April 5, 2013 by a Residential Tenancy arbitrator because the Notice was on an out of date form and the landlord had not checked off any boxes indicating the reason(s) for the Notice.

The incidents forming the basis of this Notice are incidents which have occurred since April 5, 2013.

The tenant is of the view that there is a plot by her neighbours to have her evicted.

Analysis

On the evidence before me there is no proof of any ulterior motives on the part of the landlord or the other tenants in the building.

The evidence satisfies me that since April 5, 2013 the tenant has repeatedly smoked marijuana in her rental unit, despite previous cautions and knowing the smoke was disturbing other tenants. I find that the tenant’s smoking of marijuana in or around her rental unit has unreasonably disturbed other occupants in the building and has seriously jeopardize the health or safety of at least Mr. J.C.

Conclusion

The Notice is a valid Notice. The tenant's application to cancel it is dismissed. The landlord has requested an order of possession as he is allowed to do under s. 55 of the *Residential Tenancy Act* and I grant him that order, to be effective at one o'clock in the afternoon on June 30, 2013.

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 19, 2013

Residential Tenancy Branch

