



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding COAST REALTY GROUP LTD
and [tenant name suppressed to protect privacy]

Corrected Decision

Dispute Codes:

CNC, FF

Introduction

~~The above noted hearing was scheduled for October 30, 2013 at 1:00 p.m. At 1:15 p.m. neither party had signed into the hearing.~~

~~Accordingly, in the absence of an appearance by the applicant or respondent, this application is dismissed with leave to reapply.~~

This hearing dealt with an Application for Dispute Resolution by the tenant to cancel a One-Month Notice to End Tenancy for Cause.

Both parties were present at the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained. The participants had an opportunity to submit documentary evidence prior to this hearing, and the evidence has been reviewed. The parties were also permitted to present affirmed oral testimony and to make submissions during the hearing. I have considered all of the affirmed testimony and relevant evidence that was properly served.

Issue(s) to be Decided

- Should the One Month Notice to End Tenancy for Cause be cancelled?

Background and Evidence

The tenancy began July 1, 2012 and current rent is \$1,000.00. A security deposit of \$500.00 and pet damage deposit of \$500.00 is being held in trust by the landlord.

The landlord testified that complaints about the smell of marijuana, apparently emanating from inside the suite, were received from the clinic located on the main floor of the building. The landlord testified that they looked into the matter and, despite denials from the tenant, issued a One Month Notice to End Tenancy for Cause on the

basis that the tenant had violated a term in the tenancy agreement prohibiting smoking inside the unit.

The landlord testified that the smell was evident to the landlord and other witnesses when they came to the tenant's door. The landlord acknowledged that they had no physical evidence to prove that the tenant is smoking inside, other than the odour.

The landlord testified that the units are heated by baseboard heaters and there is little opportunity for significant air exchange between the units. Nonetheless, the landlord is convinced that the tenant was smoking inside the rental unit and that this odour unreasonably disturbed renters in the other unit .

The tenant testified that his son smokes medical marijuana, but this only occurs when he visits during the Summer months and he always limits his smoking to the balcony area outside, never inside the rental unit. The tenant pointed out that there is another rental unit nearby where the residents smoke marijuana.

Analysis

Section 47 of the Act permits a landlord to terminate a tenancy by issuing a One-Month Notice to Notice to End Tenancy for Cause in cases where a tenant or a person permitted on the residential property by the tenant had significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property.

In the case before me the landlord made serious allegations that alleging that the tenant had significantly disturbed or unreasonably interfered with the landlord or other residents, and that the tenant had engaged in illegal activity that has or is likely to affect the quiet enjoyment, security, safety or physical well being of another occupant or the landlord.

I accept that the tenants were smoking but find that insufficient evidence was submitted to verify that the tenant smoked inside the suite in violation of the agreement. Based on the evidence before me, I find that the One Month Notice to End Tenancy for Cause has no merit and must be cancelled.

In cancelling the Notice, I note that the tenant and landlord have agreed to discuss designating an alternate area where the tenant can smoke outside without any risk it will interfere with the lower unit and the landlord has committed to thoroughly investigating the infrastructure of the building to see if there are any gaps where the smoke or odours are entering.

I hereby order that the One-Month Notice to End Tenancy for Cause dated September 13, 2013 is cancelled and of no force nor effect. The tenant is entitled to reimbursement

of the \$50.00 paid for the tenant 's cost of the application and is ordered to deduct this amount from the next rental payment owed to the landlord as a One-time abatement.

Conclusion

The tenant is successful in the application and the One Month Notice to End Tenancy for Cause.

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 30, 2013

Corrected: October 31, 2013

Residential Tenancy Branch