



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC

Introduction

This is an application to cancel a Notice to End Tenancy that was given for cause.

A small amount of documentary evidence and written arguments has been submitted by the applicant prior to the hearing. I have thoroughly reviewed all submissions.

I also gave the parties the opportunity to give their evidence orally and the parties were given the opportunity to ask questions of the other parties.

All testimony was taken under affirmation.

Issue(s) to be Decided

The issue is whether or not to cancel or uphold Notice to End Tenancy that was given for cause.

Background and Evidence

The landlord testified that:

- In the tenancy agreement the tenant agreed that it would just be herself and her children living in the rental unit, and now her boyfriend has moved into the unit as well. He has actually witnessed her boyfriend sleeping in the rental property, and the police came to him looking for her boyfriend.
- Secondly, this is a no smoking unit and the tenant was told that she could only smoke off of the property. The tenant however goes outside and smokes without leaving the property and as a result smoke comes into the rental property and even into his portion of the property which is affecting his health as he has asthma.
- He is therefore requesting that the Notice to End Tenancy be upheld, and that an Order of Possession be issued.

The tenant testified that:

- Her boyfriend does not live in the rental unit; he has his own place, and only sleeps over at her place on occasion.

- The landlord knew she was a smoker when she moved in, and she was told it was fine as long as she smoked outside, she was not told that she had to smoke off of the property. She always smokes outside.

Analysis

The burden of proving the reasons given for ending it tenancy lies with the landlord, and when it is just the landlord's word against that of the tenant that is not sufficient to meet the burden of proof.

In this case the landlord has provided no evidence support his claim that the tenants boyfriend is now living in the rental unit, nor has he provided any evidence to support his claim that the tenant was told she has to smoke outside the property.

Therefore in the absence of any supporting evidence it is just the landlord's word against that of the tenant and as stated above that is insufficient to meet the burden of proof.

I therefore will be setting aside the Notice to End Tenancy and this tenancy will continue.

Conclusion

The one-month Notice to End Tenancy dated December 31, 2013 is hereby canceled and this tenancy continues. The landlords request for an Order of Possession is denied.

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: February 24, 2014

Residential Tenancy Branch

