



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

Decision

Dispute Codes:

CNC, MNDC

Introduction

This Application for Dispute Resolution by the tenant was seeking 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.

The One-Month Notice to Notice to End Tenancy for Cause, a copy of which was submitted into evidence, indicated that the tenant had significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property and that the tenant had breached a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.

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Issue(s) to be Decided

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

Background and Evidence

The tenant had submitted into evidence a copy of the One-Month Notice to End Tenancy for Cause dated March 25, 2014 showing an effective date of April 30, 2014. .

The landlord's evidence described an incident in which the tenant's guest admitted to smoking in a common area on March 25, 2014, despite a material term in the tenancy agreement prohibiting all smoking on the property.

Submitted into evidence was a copy of the tenancy agreement, copies of no smoking notices and copies of other communications.

The landlord testified that this individual also confronted the landlord causing a disturbance in the complex. The landlord testified that, although they had suspected previous violations by the tenant's visitor, this recent incident is the only confirmed violation. The landlord acknowledged that the tenant did take immediate action to correct the violation.

The tenant confirmed that this incident did occur as described and that it transpired while the tenant was not present. The tenant testified that immediate action was taken to apologize and to inform the visitor that they were no longer welcome.

The tenant is requesting that the landlord's One Month Notice to End Tenancy for Cause be cancelled.

Analysis

I accept that the tenancy agreement contains a material term prohibiting smoking anywhere on the property. I find that the tenant did breach a material term of the tenancy due to the conduct of the tenant's guest on March 25, 2014 in which the guest admitted to smoking on the stairs..

With respect to the confrontation, I find that section 28 of the Act protects the right to quiet enjoyment and this right applies to all residents in the complex.

I find that the conduct described, while it may have been inappropriate would not be sufficiently significant nor unreasonable to warrant ending the tenancy for cause.

Accordingly, I find that the One-Month Notice must be cancelled.

In cancelling the Notice, I caution the tenant that this decision will serve as a warning and the tenant is now aware that future transgressions of the smoking restriction could be considered as a valid reason justifying the landlord to issue another Notice to terminate tenancy for cause under section 47 of the Act.

Based on the above, I hereby order that the One-Month Notice to End Tenancy dated March 25, 2014 be cancelled and of no force nor effect.

I further grant the tenant reimbursement of the \$50.00 cost of this application and order that the tenant may reduce the next monthly rent payment to the landlord by \$50.00.

Conclusion

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

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 21, 2014

Residential Tenancy Branch

