



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding CALVERT HOUSE
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC

Introduction

This matter dealt with an application by the Tenants to cancel a Notice to End Tenancy for Cause.

The Tenant said she served the Landlord with the Application and Notice of Hearing (the “hearing package”) by registered mail on January 23, 2015. Based on the evidence of the Tenant, I find that the Landlord was served with the Tenants’ hearing package as required by s. 89 of the Act and the hearing proceeded with all parties in attendance.

Issues(s) to be Decided

1. Are the Tenants entitled to an Order to cancel the Notice to End Tenancy?

Background and Evidence

This tenancy started on September 1, 2007 as a month to month tenancy. Rent is \$975.00 per month payable in advance of the 1st day of each month. The Tenant paid a security deposit of \$450.00 on September 1, 2007 and a pet deposit of \$450.00 in installments in September, 2014.

The Landlord said his agent served the Tenant with a 1 Month Notice to End Tenancy for Cause dated January 11, 2015 by posting it on the door of the Tenants’ rental unit. The Effective Vacancy Date on the Notice is February 28, 2015. The Tenants are living in the unit and the Landlord said he wants to end the tenancy.

The Landlord said the reasons on the 1 Month Notice to End Tenancy are that the Tenant has seriously jeopardizing health or safety of other occupants and significantly interfering with or unreasonably disturbing another tenant or the landlord. The Landlord said they have received 3 complaints from other tenants that there is a marijuana smell in the hallway on the second floor by the Tenants rental unit and this is a breach of the settlement agreement reached between the parties on July 4, 2014. The Landlord submitted 2 of the tenant complaint letters as evidence. The complaint letters say there has been a smell in the second floor hallway that the tenants believed was marijuana.

The letters do not mention the Tenants or that the Tenants have been seen smoking marijuana.

The Tenant said they do not smoke marijuana in the rental unit and they have complied with the settlement agreement dated July 4, 2014. The Tenant continued to say that her husband smokes medical marijuana, but he does so outside in his car since July 4, 2014. As well the Tenant said there are a number of other occupants in the other unit on the second floor and the Tenant said it could be these occupants smoking the marijuana. The Landlord said he did not know the circumstances around the other rental unit on the second floor of the rental complex and his manager was away on holidays.

Neither the Landlord nor the Tenant had any closing remarks.

Analysis

It is the obligation of a landlord issuing a Notice to End Tenancy to prove the reasons for ending the tenancy. In this situation the Landlord has provided complaint letters from other tenants in the building that they believe they smelled marijuana in the second floor hallway. The complaint letters do not mention the Tenants in the complaint letters nor is there any evidence submitted by the Landlord proving the Tenants are the parties smoking the marijuana. As well the Tenant has indicated there are a number of occupants living in the other second floor rental unit and they could be the parties smoking the marijuana. The Landlord did not know the circumstances of the other rental unit on the second floor as his manager is away. Therefore he did not know who was living in the other second floor unit or if they could be the reason for the marijuana smell in the second floor hallway.

I find it is not proven who is smoking the marijuana if marijuana is being smoked in the rental complex. Further, I find the Landlord has not proven the reasons on the 1 Month Notice to End Tenancy for Cause dated January 11, 2015. Consequently the Tenants have established grounds for the Notice to End Tenancy to be cancelled. I order the 1 Month Notice to End Tenancy for Cause dated January 11, 2015 to be cancelled and the tenancy will continue as agreed in the tenancy agreement.

Conclusion

I order the 1 Month Notice to End Tenancy for Cause dated January 11, 2015 to be cancelled and the tenancy is ordered to continue as set out in the Tenancy Agreement.

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 18, 2015

Residential Tenancy Branch

