



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Bantview Gardens
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC

Introduction

This hearing was convened in response to an application by the Tenants pursuant to section 47 of the *Residential Tenancy Act* (the “Act”) for an Order cancelling a notice to end tenancy.

The Landlords and Tenants were each given full opportunity under oath to be heard, to present evidence and to make submissions.

Issue(s) to be Decided

Is the notice to end tenancy valid?

Are the Tenants entitled to a cancellation of the notice to end tenancy?

Background and Evidence

The tenancy of a third floor unit started in August of 2010. On February 27, 2015 the Landlord served the Tenant personally with a one month notice to end tenancy for cause (the “Notice”). The Notice sets out the following reasons:

1. Tenant or a permitted on the property by the tenant has:
 - Significantly interfered with or unreasonably disturbed another occupant or the landlord;
 - Seriously jeopardized the health or safety or lawful right of another occupant or the landlord;
 - Put the landlord's property at significant risk; and

2. Tenant has engaged in illegal activity that has, or is likely to:
 - Adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant or the landlord;
 - Jeopardize a lawful right or interest of another occupant or the landlord.

The Landlord states that between April and November 2014 the Landlord received complaints about the Tenants smoking marihuana on their balcony. The Landlord provided letters from two tenants that note that the smells are “very bothersome”, “strong” and “not appreciated”. One of the tenants state that the smells caused allergic reactions and headaches and that they had to close their windows. The Landlord states that since then one additional complaint was made on January 22, 2015 and that this tenant stopped keeping track. The Landlord states that the smell of marihuana has also been smelled in the hallway lasting approximately 20 minutes. The Landlord states that the smoking either on the deck or inside the unit occurs “sometimes everyday”. The Landlord states that the smoking of marihuana is an illegal activity that is restricted by a “crime free” addendum. The Landlord states that three tenants, one of whom has been a tenant for 14 years and who did not provide a witness letter, have indicated that if the smoking continues they will end their tenancy.

The Tenant states that as regular smokers of marihuana they have never had any problem from other tenants in the building or their landlord until a new manager took over. The Tenant provided a letter from the previous landlord at the building indicating the same. The Tenant states that following a meeting with the Landlord in February 2014 they were told to only smoke outside and that since then the Tenants have complied. The Tenant states that one of them also stopped smoking altogether in September 2014. The Tenant states that several people smoke marihuana outside the front of the building or in the parking lot and that one of the complaining tenants is closer to that area than the Tenants’ unit. The Tenant states that they also smell

marihuana in their unit and in the first floor hallway and they have no idea where it's coming from.

The Landlord states that only a few other tenants smoke marihuana off the property and that one of the tenant letters indicate seeing the Tenant smoking marihuana on the balcony. It is noted that this letter is dated June 2014.

Analysis

Where a notice to end tenancy comes under dispute, the landlord has the burden to prove, on a balance of probabilities, that the tenancy should end for the reason or reasons indicated on the Notice and that at least one reason must constitute sufficient cause for the Notice to be valid. While there is some suggestion from the Landlord that the Tenants are smoking in the unit, I found the Tenant's evidence of only smoking outside since February 2014 to be believable. I also note that both Parties have indicated that they smelled smoke in different areas of the building. I find therefore that the evidence does not substantiate on a balance of probabilities that the Tenants are smoking in their unit and therefore causing harm or jeopardy to any other tenants or the landlord.

It is undisputed that the Tenants were asked by the Landlord to smoke outside of their unit. I accept the believable evidence that only one of the Tenants has been smoking since September 2014 and that this Tenant smokes outside. It is undisputed that other tenants also smoke outside the unit. While the smell of marihuana coming from outside a building could possibly affect a person's quiet enjoyment, given the undisputed evidence that other tenants also smoke outside the building, accepting that this location is nearer the most often complaining tenant, and considering that the evidence of the Tenant's smoking "sometimes daily" is not helpful, I cannot find on a balance of probabilities, that the Tenants are responsible for any extent of the smell that may be coming from the outdoors. Further I do not consider a "very bothersome" smell to indicate significant interference or unreasonable disturbance, particularly when the smell emanates from outside and would only last a few seconds to minutes. Without

supporting medical documentation I find that there is insufficient evidence to support that the smells of marihuana from outdoors has caused serious jeopardy to anyone's health.

There is no evidence of risk to the property or anyone's lawful rights. Evidence of the addendum does not in itself substantiate the Notice as any illegal activity must cause significant problems in order to justify an eviction. There is no evidence to support that the security, safety or physical well-being of any person has been affected by the Tenants smoking outside the unit. There is no evidence from any of the other tenants to support the Landlord's oral evidence that tenants are considering moving out of the unit because of the smell of marihuana.

As a result of the above, I find that the Landlord's evidence is insufficient to substantiate on a balance of probabilities that any of the reasons for the Notice are valid. I find therefore that the Tenants are entitled to a cancellation of the Notice. The tenancy continues.

As the Tenants' application has met with success, I find that the Tenant is entitled to recovery of the \$50.00 filing fee and I order the Tenant to reduce future rent payable by this amount.

Conclusion

The Notice is cancelled and of no effect.

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: April 10, 2015

