



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* ("the Act") for cancellation of the landlord's 1 Month Notice to End Tenancy for Cause (the 1 Month Notice) pursuant to section 47.

Both parties attended the hearing (two landlords, a landlord witness and the tenant) and were given a full opportunity to be heard, to present sworn testimony, and to make submissions. The landlords confirmed receipt of the tenant's Application for Dispute Resolution package provided by mail on May 6, 2015. I accept the landlord was sufficiently served with the dispute resolution package and the attached materials. Before the conclusion of this hearing, the parties discussed the issues between them, engaged in a conversation, turned their minds to compromise and achieved a resolution of their dispute.

Background and Evidence

This tenancy began on January 1, 2015 on a month to month basis. With a rental amount of \$400.00 payable on the first of each month, the tenant resides in a bedroom with a hot plate and small living space. Two other tenants reside in similar spaces in the lower portion of a larger building. Landlord MG testified that she continues to hold a \$200.00 security deposit paid by the tenant on or about January 5, 2015.

The landlords issued a 1 Month Notice to End Tenancy for Cause based on complaints from neighbours with respect to the tenant's smoking. Both parties testified that when the tenant initially moved in, the landlords told him it was acceptable to smoke on the patio, outside the unit. Later, the landlords received complaints from neighbours with respect to the tenant's smoking and, at that time, they became aware of municipal by-law restrictions with respect to smoking near a residential property.

As a result of the level of conflict between one neighbour in particular and the tenant, the landlords issued the 1 Month Notice. This one neighbour prepared a lengthy statement to the landlords for this hearing. The landlords submitted the statement and also called the neighbour to testify at the hearing. Despite a resolution of the dispute between landlord and tenant, the neighbour was given an opportunity to provide testimony. He spoke to the impact of smoke on his wife who is pregnant and has asthma. He also testified that several children live in the building and are affected by the smoke. The neighbour testified that the smoke and the smell of smoke are significant throughout the building. The neighbour sought to raise other issues that were not relevant to the tenancy at the centre of this matter but his own tenancy. His testimony was noted.

Landlord MG testified, speaking on behalf of both landlords, that if the tenant would abide all smoking laws and regulations, he could continue to reside on the residential premises. The tenant agreed to do so.

Analysis

Pursuant to section 63 of the *Act*, the Arbitrator may assist the parties to settle their dispute and if the parties settle their dispute during the dispute resolution proceedings, the settlement may be recorded in the form of a decision or an order. Given the agreement reached between the parties during the proceedings, I find that the parties have settled their dispute and the following records this settlement as a decision:

The Parties mutually agreed as follows:

1. The tenant agreed to abide all smoking regulations related to the residential premises including rules specific to this residence; by-laws for the area; and any provincial legislation applicable to smoking cigarettes on residential premises.
2. The tenant agreed, specifically, not to smoke cigarettes inside the residential premises.
3. The landlord agreed that the notice to end tenancy should be cancelled and the notice to end tenancy no longer be of force and effect.
4. These terms comprise the full and final settlement of all aspects of this dispute for both parties.

Conclusion

To give effect to the settlement reached between the parties and as discussed at the hearing, I order that the tenant comply with the agreement by abiding by all applicable and relevant rules and legislation with respect to smoking cigarettes on these residential premises.

I note that the notice to end tenancy is of no force and effect. The tenancy continues.

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 27, 2015

Residential Tenancy Branch

