



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, FF, MT, O

Introduction

This is an application to cancel a Notice to End Tenancy that was given for cause, a request for recovery of the filing fee paid, and a request to allow the tenant more time to make an application to cancel a Notice to End Tenancy.

A substantial amount of documentary evidence, photo evidence, and written arguments has been submitted by the parties prior to the hearing.

I have given the parties the opportunity to present all relevant evidence, and to give oral testimony, 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 issues are whether to allow the tenant more time to make an application to cancel a Notice to End Tenancy, whether to cancel a Notice to End Tenancy or uphold it, and whether to order recovery of the filing fee.

Background and Evidence

The tenant is requesting an extension of time to file his application for dispute resolution, because he states that he was misinformed when he originally phoned the Residential Tenancy Branch and was told that he had 10 business days rather than just 10 days to file its dispute.

The landlords did not make any objection to the request for an extension of time to file the dispute.

The landlords testified that:

- This tenancy began on December 15, 2014 and part of the tenancy agreement states that no smoking is allowed in the unit or on the property. (See section 4 of the Residential Tenancy Agreement Addendum)
- The tenant breached the no smoking rule and therefore the tenant was given a breach letter on February 8, 2015 requesting that he rectify the issue and advising him that this was his final warning.
- On March 13, 2015 they witnessed the tenants invited guest smoking on the property and therefore the one month Notice to End Tenancy was served.
- They want this tenancy ended and are requesting that an Order of Possession be issued.

The tenant testified that:

- He does not dispute anything that the landlords have said.
- Section 4 of the Residential Tenancy Agreement Addendum does state that there is to be no smoking in the rental unit or on the property.
- He also admits that he did breach this smoking rule on two occasions, however after receiving written breach letter he has attempted to ensure that no one smokes on the property.
- He does admit however that his father's girlfriend did smoke on the property, even though she knew she was not supposed to.
- He is willing to move from the rental unit; however he is requesting an extra 2 to 3 months to find a suitable rental unit.

Analysis

Since the landlords did not object to the tenants request for an extension of time to file the application, I will allow that extension.

It is my finding however that the tenant has breached a material term of the tenancy agreement and failed to rectify that breach within a reasonable time after receiving written notice to do so.

The tenant has admitted that he breached the tenancy agreement, received a breach letter, and then subsequently had a guest again breach the tenancy agreement by smoking on the property.

The landlord therefore did have the right to give a Notice to End Tenancy under section 47(1)(h) of the Residential Tenancy Act, and I will not cancel the Notice to End Tenancy.

Further, the notice required for breach of the material term of the tenancy agreement is one clear month, and we are already well past that time frame and therefore I will not grant any further extension.

The landlords requested an Order of Possession at the hearing and therefore I will be issuing that order.

Conclusion

The tenant's application is dismissed in full without leave to reapply, and I have issued an Order of Possession to the landlords, that is enforceable two days after service on the tenants.

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 07, 2015

Residential Tenancy Branch

