



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 an application by the tenant for an order to set aside a notice to end tenancy. Both parties attended the hearing and had opportunity to be heard. The tenant acknowledged receipt of evidence submitted by the landlord. Both parties gave affirmed testimony.

Issue to be Decided

Does the landlord have grounds to end this tenancy?

Background and Evidence

The tenancy began in August 2004. The rental unit is one of the two suites that are located in the basement of a three level house. The top floor is occupied by a single tenant and, the main floor by a family with two children. The monthly rent is \$794.00 payable on the first of each month. There is no written tenancy agreement.

The tenant stated that from the start of tenancy, the house was occupied by tenants who smoked marijuana inside the home and neither did the landlord nor other occupants complain about this activity. The tenant stated that she is a licensed user of marijuana.

The landlord purchased this property from his father approximately five years ago. Since then he has insisted that the smoking of any substance is not allowed on the property. The landlord stated that sometime in late 2014, he gave the tenant a verbal warning about smoking on site.

The landlord also stated that on February 19, 2015, he received a complaint from the family on the main floor about dog feces and smoking by the tenant. The tenant agreed that she was notified by text message. She explained that her dog was ill and had kept her up all night and therefore she did not pick up after the dog on that one day.

The tenant stated that other than that day, there were no other complaints about dog feces. The tenant also denied smoking inside the rental unit

The next incident occurred almost a year later, on January 13, 2016. The tenant agreed that her visitor brought marijuana to the rental unit and she just broke it up to prepare it for smoking but did not smoke inside the home. She agreed that the odour of marijuana emanated from the “blossom” and was present in the home. The tenant also stated that a vent that was blocked with towels was cleared by the landlord and this contributed to the odour pervading the entire home.

On January 13, 2016, the landlord served the tenant with a one-month notice to end tenancy for cause. The reasons for the notice were that the 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 and has jeopardized a lawful right or interest of another occupant or the landlord. The tenant applied to dispute the notice in a timely manner.

The tenant stated that on January 13, 2016, she became aware that just breaking open and preparing the buds for smoking causes them to emit an odour that is strong and travels through the vents to other areas of the home. The tenant stated that since then she does this preparation outside the home. The landlord agreed that since the start of 2015 to the present there have been only two incidents for which he gave her one verbal warning and one notice to end tenancy.

The landlord agreed that there have not been any problems with the tenant’s activities since she was served with the notice to end tenancy.

Analysis

In order to support the notice to end tenancy, the landlord must prove at least one of the grounds alleged, namely that the 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 and has jeopardized a lawful right or interest of another occupant or the landlord.

Based on all the evidence and testimony of both parties, I find that the tenant has not engaged in illegal activity because she has a permit to use marijuana. I accept that the tenant behaved in an inappropriate manner on January 13, 2016. From the evidence and testimony of both parties, it appears that this incident was isolated and not an ongoing pattern of behaviour for this tenant.

I further find that the tenant is a long term tenant and restrictions regarding her activity started only when the new landlord purchased the property. The landlord has not provided the tenant with any house rules or warning letters in writing. I also find that the tenant agreed that she had behaved inappropriately and apologized for her lapse. Both parties agreed that the tenant has not had any negative interactions with the landlord or other occupants since the notice to end tenancy was served on her.

While I accept that the tenant acted inappropriately and caused some discomfort and inconvenience to the other occupants of the home, I am not satisfied that the actions of the tenant justify bringing this tenancy to an end.

I therefore allow the tenant's application and set aside the landlord's notice to end tenancy dated January 13, 2016. As a result, the tenancy shall continue in accordance with its original terms.

The tenant would be wise to refrain from giving the landlord and other occupants of the rental property, reason to complain. I find it timely to put the tenant on notice that, if such behaviours were to occur again in the future and another notice to end tenancy issued, the record of these events would form part of the landlord's case should it again come before an Arbitrator, for consideration.

Conclusion

The notice to end tenancy is set aside and the tenancy will continue.

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: March 03, 2016

Residential Tenancy Branch

