



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, OPT

Introduction

This hearing dealt with the Tenant's Application for Dispute Resolution, seeking to cancel a 1 Month Notice to End Tenancy, and to obtain an order of possession for the rental unit, under the *Residential Tenancy Act* (the "Act").

Both parties appeared at the hearing. The hearing process was explained and the participants were asked if they had any questions. Both parties provided affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions to me.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Preliminary Matters

The Tenant testified that she had not provided copies of her evidence, in particular, her medical prescription for the use of marijuana. The Tenant confirmed she would provide this to her Landlord.

As the Tenant was still in possession of the rental unit there was no need to proceed with the portion of the application dealing with an order of possession for the Tenant.

Issue(s) to be Decided

Should the Notice to End Tenancy be cancelled?

Background and Evidence

Pursuant to the rules of procedure, the Agents for the Landlords proceeded first.

The Agents testified they had actually not given the Tenant a 1 month Notice to End Tenancy. In evidence the Landlord provided a copy of a "Tenant's Notice to Vacate" which they had provided to the Tenant. This document is similar to a notice that a tenant would give to a landlord when they want to give their notice that they are vacating and moving to another residence.

In this instance the Tenant testified that she did not sign the notice to vacate.

The Agents for the Landlord submitted documentary evidence and testified that the Tenant was smoking marijuana in violation of a crime free housing agreement. The Agents testified that marijuana is still illegal and the Tenant's use of the marijuana on the balcony is disturbing them and other occupants.

The Tenant testified that she has a prescription for smoking medical marijuana, although she acknowledged that she had not explained to the Landlord that she uses this prior to moving into the rental unit.

Both parties agreed that the building is a smoking building and that the tenancy agreement does not prevent the Tenant from smoking in her unit.

It appears the problems occur when the Tenant smokes on the balcony, although the Agents for the Landlord were not clear whether or not the smoking of the medical marijuana inside the rental unit was disturbing other renters.

The Agents testified that they would not have rented to the Tenant if they knew she smoked marijuana.

Analysis

Based on the above, the evidence and testimony, and on a balance of probabilities, I find that the Tenant's Application must be allowed as there was no valid Notice to End Tenancy in the approved form issued by the Landlord. Therefore, this tenancy will continue until ended in accordance with the Act.

Although I make no orders in regard to this tenancy, I note that the Tenant was under the impression that smoking marijuana on the balcony of the rental unit was less

disturbing to others than smoking it in the rental unit. This resulted in a short discussion with the parties.

I explained to both the Agents and the Tenant that people are smoking and vaporizing both tobacco and marijuana in rental units across the province.

In regard to medical or any other marijuana usage, it is a controlled substance, and the user must adhere to the applicable federal laws and their doctors' prescribed usage.

In the cases where medical marijuana is legally used under federal licence and a doctor's prescription, it is common that this use is usually done by using a vaporizer or by ingestion, as it appears most doctors are reluctant to recommend smoking of any substance.

Nevertheless, regardless of means of consumption, if smoke or vapours of any kind unreasonably disturbs others it might be a breach under the Act and/or tenancy agreement.

Following this discussion the parties agreed to arrange to meet and discuss the situation further.

Conclusion

The Tenant's application is allowed, as the Landlord did not issue a valid Notice to End Tenancy in the approved form. The tenancy will continue until ended in accordance with the Act. The parties agreed to meet and discuss this situation further.

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: July 21, 2016

Residential Tenancy Branch