



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 section 47 of the *Residential Tenancy Act* (the "Act") for cancellation of the landlord's 1 Month Notice to End Tenancy for Cause (the "1 Month Notice").

The tenant and landlord's agent attended the hearing. The landlord confirmed he is an agent of the landlord's company named in this application, and has authority to speak on its behalf.

At the outset of the hearing, each party confirmed that they had received the other party's evidence. Neither party raised any issues regarding service of the application or the evidence.

Both parties were given full opportunity to provide affirmed testimony and present their evidence. I have reviewed all testimony and other evidence. However, in this decision I only describe the evidence relevant to the issues and findings in this matter

Issue(s) to be Decided

Is the tenant entitled to have the landlord's 1 Month Notice dismissed? If not, is the landlord entitled to an order of possession?

Background and Evidence

As per the submitted tenancy agreement and testimony of the parties, the tenancy began on June 1, 2014 a fixed term until May 31, 2015 at which time the tenancy continued on a month-to-month basis. Rent in the amount of \$900.00 is payable on the first of each month. The tenant remitted a security deposit in the amount of \$450.00 at the start of the tenancy. The tenant continues to reside in the rental unit.

The tenant acknowledged receipt of the landlord's 1 Month Notice dated August 11, 2016 by way of posting to her rental unit door. The grounds to end the tenancy cited in that 1 Month Notice were;

- the tenant or a person permitted on the property by the tenant has seriously jeopardized the health or safety or lawful right of another occupant or the landlord
- 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

Landlord

It is the landlord's position that the tenant's heavy smoking affects the quiet enjoyment of him and other tenants. The landlord testified that he is allergic to smoke and others have complained about the drifting of smoke from the rental unit. In an effort to support his claim, the landlord has submitted complaints from three other tenants within the complex.

The landlord acknowledged that the tenant's tenancy agreement does not prohibit the tenant from smoking but explained that the building is transitioning from a smoking to non-smoking building.

Tenant

The tenant seeks to have the landlord's notice set aside as she does not agree the landlord has cause to end her tenancy. The tenant testified that she has attempted to cooperate with the landlord within the realm of her tenancy agreement. Although her tenancy agreement does not prohibit smoking, she has begun smoking on her balcony in an effort to minimize any effects of her smoking on others. The tenant testified that she has not engaged in any illegal activity that negatively affects the quiet enjoyment of others.

Analysis

Under section 47 of the *Act*, a landlord may end a tenancy if the tenant or a person permitted on the residential property by the tenant has seriously jeopardized the health or safety or lawful right of another occupant or the landlord or 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.

The onus is on the landlord to prove the reasons listed on the 1 Month Notice took place by the tenant or person permitted on the property by the tenant. The landlord provided evidence in the form of written complaints and oral testimony regarding the smoke.

The landlord has provided insufficient evidence to establish the tenant has seriously jeopardized the health or safety or lawful right of another occupant. The tenant entered into a tenancy agreement that did not prohibit smoking and the landlord is now trying to restrict smoking based on what he says are complaints from other tenants. The complaints from the other three tenants are dated well after the 1 Month Notice was issued. Therefore these written complaints could not form the basis of the 1 Month Notice. In relation to the landlord's complaint that the smoking affects his allergy, I find the landlord ought to have known when taking on the role of property manager in a smoking building he would encounter smoke.

The landlord has provided insufficient evidence to establish the tenant has engaged in any illegal activity.

For these reasons, I find the landlord has not met the burden of proof and accordingly, I uphold the tenant's application to cancel the 1 Month Notice.

Conclusion

The tenant's application to cancel the 1 Month Notice is upheld. The tenancy will continue until it is ended in accordance with the *Act*.

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: October 17, 2016

Residential Tenancy Branch