



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Creighton & Associates Realty
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC, FF

Introduction

This was a hearing with respect to the tenant's application to cancel a one month Notice to End Tenancy for cause. The hearing was conducted by conference call. The tenant attended with his aunt. The landlord's representative called in and participated in the hearing.

Issue(s) to be Decided

Should the Notice to End Tenancy dated August 15, 2016 be cancelled?

Is the landlord entitled to an order of possession?

Background and Evidence

The rental unit is an apartment in Vancouver. The tenancy began in February, 2008. The landlord served the tenant with a Notice to End Tenancy for cause dated August 15, 2016. The Notice required the tenant to move out of the rental unit by September 30, 2016. The Notice alleged that the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord. The landlord stated on the notice that it related to smoking in the rental unit to the disturbance of the tenant's neighbours.

The tenant applied to cancel the Notice to End Tenancy. He said in his application and supporting materials that his tenancy agreement does not prohibit smoking and he has smoked in the rental unit since his tenancy began in 2008, but only recently have there been any complaints from the landlord. The tenant testified that since he received complaints from the landlord about smoking, he has purchased an air purifier and has taken steps to prevent smoke from escaping from the unit, by blocking it from escaping under the door. The tenant said that he does not smoke on the balcony and does go outside to smoke when the weather is tolerable. He said that he works 10 hours per day and is away from the rental unit for at least that long each day so his smoking is not constant. The tenant said that it would help to prevent smoke from escaping from the

rental unit if the landlord would install a “sweep” or door guard on the bottom of the entrance to the rental unit.

The landlord’s representative said at the hearing that he was prepared to install a door guard and would contact the tenant to make arrangements. The landlord’s representative said he was not pressing to evict the tenant at this time and was glad to hear that the tenant was taking steps to address the complaints.

Analysis

The tenant correctly pointed out that his tenancy agreement does not prohibit smoking. The landlord referred to complaints from other tenants but it did not provide any documentary evidence of complaints. The tenant has correctly noted that his tenancy agreement does not prohibit smoking. I find that the landlord has not established that there are grounds to end the tenancy and I allow the tenant’s application. I order that the Notice to End Tenancy dated August 15, 2016 be, and is hereby cancelled. The tenancy will continue until ended in accordance with the *Residential Tenancy Act*. The tenant was cautioned at the hearing that although smoking is not prohibited, if his smoking is found to be a nuisance to other tenants it may be a reason for serving another Notice to End Tenancy for cause.

The tenant is entitled to recover the \$100.00 filing fee for his application. He may deduct the sum of \$100.00 from a future rent payment to the landlord.

Conclusion

The tenant’s application is allowed the Notice to End Tenancy is cancelled.

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 21, 2016

Residential Tenancy Branch