



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding William Nemetz Investments
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC

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 the hearing and was represented by his social worker and support work who acted as his advocates. The landlord's representative attended together with an owner of the rental property and I heard testimony from the landlord's witness who is an occupant of the rental property and lives in the suite directly above the rental unit.

Issue(s) to be Decided

Should the Notice to End Tenancy dated September 26, 2016 be cancelled?

Background and Evidence

The rental unit is an apartment in a wood frame apartment building in Vancouver. The tenancy began in 1999. The tenant is a smoker and smoking was not prohibited under his tenancy agreement. There have been two previous dispute resolution proceedings regarding the tenancy. In a decision dated July 25, 2012 an arbitrator addressed the tenant's application to cancel a one month Notice to End Tenancy for cause. The arbitrator allowed the tenant's application and cancelled the Notice to End Tenancy because the landlord's witness was not available. The cancellation was specifically declared to have been made without prejudice to the landlord's right to issue a new Notice to End Tenancy because there was no decision made as to the merits of the matter.

There was a second dispute resolution proceeding in May, 2016. It was unrelated to the current matter and dealt with the tenant's right to an additional parking stall.

The landlord served the tenant with a one month Notice to End Tenancy for cause dated September 26, 2016 by posting it to the door of the rental unit. The Notice required the tenant to move out of the rental unit by October 31, 2016. The stated reasons for the Notice were that the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord and that he has seriously jeopardized the health or safety or lawful right of another occupant or the landlord.

The landlord submitted letters and complaints about the tenant's conduct and alleged bullying and harassment of other occupants. Some of the complaints related to incidents that happened several years ago. The principal concern raised by the landlord relate to the tenant's smoking in the rental unit and its effect on other occupants of the rental property, in particularly the occupant who lives in the unit directly above the tenant. This occupant, Mr. A.N. testified at the hearing. He said that the smoke from the tenant's cigarettes and his occasional use of marijuana pervades his rental unit on a regular basis. He said that the smoke is affecting his health and it so objectionable that his friends and his girlfriend do not like to come to his apartment. He has had friends tell him that they needed to leave because of the smoke. The witness said that the smoke affects him so strongly that he will have to move from the rental unit at the end of the term in February

Analysis

At the hearing the tenant and his advocates said that the tenant was suffering from health problems, including a chronic pain condition. The tenant's advocates who are involved with his health care have offered to assist the tenant with smoking cessation treatment. The tenant said that he is looking for alternative housing; he is very concerned about losing his housing at this time due to his continuing health problems. The tenant said at the hearing that he is willing to immediately stop smoking in the rental unit and on the balcony of the rental unit for the duration of his tenancy if the landlord will allow the tenancy to continue. The tenant confirmed that he will not smoke anywhere inside the rental property and he will the rental and go outside to smoke so that his smoke does not enter any of the units in the rental property.

At the hearing the landlord accepted the tenant's proposal and agreed to withdraw the Notice to End Tenancy provided the tenant refrained from smoking inside the rental unit, including the balcony of the rental unit for the duration of the tenancy.

The agreement constitutes an acknowledgement by the tenant that smoking of any substance in the rental unit will provide the landlord with grounds to end the tenancy for cause.

Pursuant to the agreement of the parties as stated above, I allow the tenant's application and order that the Notice to End Tenancy dated September 26, 2016 be, and is hereby cancelled. The tenancy will continue until ended in accordance with the *Residential Tenancy Act*.

Conclusion

The Notice to End Tenancy has been cancelled by agreement of the parties based upon the tenant's promise that he will not smoke in the rental unit for the rest of his tenancy.

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: November 25, 2016

Residential Tenancy Branch