



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC

Introduction

The tenants apply to cancel a one month Notice to End Tenancy for cause dated October 1, 2016.

The parties attending the hearing and were given the opportunity to be heard, to present sworn testimony and other evidence, to make submissions, to call witnesses and to question the other. Neither side filed any supporting material.

The Notice states that the tenants or a person permitted on the property by them has significantly interfered with or unreasonably disturbed another occupant or the landlord or has seriously jeopardized the health, safety or lawful right or interests of another occupant or the landlord. The Notice also claims that the tenants have 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 jeopardize a lawful right or interest of another occupant or the landlord.

Issue(s) to be Decided

Have the tenants unreasonably disturbed or significantly interfered with another occupant or the landlord or put their health or safety or a lawful right or interest in serious jeopardy? Have the tenants conducted some type of illegal activity that seriously

Background and Evidence

The rental unit is a two bedroom half of a duplex. There is another rental unit above it.

The tenancy started in February 2016. The current monthly rent is \$1000.00. The landlord holds a \$500.00 security deposit.

Ms. J.K. says there is a written tenancy agreement. The tenant Mr. D.C. says there isn't.

In the portion of the Notice entitled "DETAILS OF THE CAUSE" the landlord has written "smoking cigarettes inside the rental unit."

Ms. J.K. testifies that the tenants are constantly smoking in their rental unit and that it is disturbing the tenants above, who have children. She says that the applicant tenants are constantly calling the police because of noise from upstairs but that it's only the sound of the children playing.

She says the written tenancy agreement does not prohibit the tenants from smoking in the rental unit.

Analysis

The landlord has not filed any material in this matter that might give the tenants formal forewarning that their complaints to the police about the noise from above would be offered as a ground for eviction. Everyone is entitled to know the case against them so that they may come to the hearing prepared to defend themselves. The failure of the landlord to formally raise this issue as a ground for the Notice prohibits him from relying on it at this hearing.

The only ground for eviction that the tenants have formal notice of is that written in the "DETAILS OF THE CAUSE" portion of the Notice, namely; smoking cigarettes inside the rental unit.

Smoking cigarettes is not illegal and so there is no ground for the landlord's claim that the tenants are engaged in illegal activity.

A tenant is entitled to smoke in his or her rental unit unless the tenancy agreement prohibits it. Ms. J.K. could not show any such prohibition to be term of this tenancy.

Conclusion

The landlord has failed to substantiate the stated cause for this Notice to End Tenancy and it is therefore cancelled.

This decision was rendered orally at hearing and 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 08, 2016

Residential Tenancy Branch