



Dispute Resolution Services

Page: 1

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 September 23, 2016.

The Notice alleges that the tenants have breached a material term of the tenancy agreement and not corrected it within a reasonable time after being given written notice to do so. Such grounds if proved are lawful grounds for a landlord to end a tenancy under s. 47 of the *Residential Tenancy Act* (the “Act”).

The details of the cause stated in the Notice are “SMOKING DRUGS INSIDE THE SUITE AND AROUND THE PROPERTY.”

All parties but Mr. M.S. attended 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. Only documentary evidence that had been traded between the parties was admitted as evidence during the hearing.

Issue(s) to be Decided

Have the tenants been smoking drugs in or around the rental unit? If so, have they breached a material term of the tenancy agreement?

Background and Evidence

The rental unit is a one bedroom basement suite below the landlords’ home. Under the written tenancy agreement the landlords are shown to be the respondent landlord and his wife Ms. Y.S., who attended the hearing.

The tenancy started in May 2016 for a one year fixed term. The monthly rent is \$825.00, due on the first of each month. The landlords hold a \$412.50 security deposit.

It is a term of the tenancy agreement that “smoking is prohibited inside the house/Suite.”

Ms. Y.S. testifies that the tenants have been smoking “weed” in the suite. Both she and her husband have been made ill by the “skunk and rotten cabbage” smell that wafts up into their home.

She says the incidents started in Jun 2016 while her 32 year old daughter was housesitting for her parents. The daughter has sworn an affidavit stating that on June 12 she smelled weed coming from the tenants’ suite and went down to confront them. Mr. R.R. admitted to her he had smoked weed for pain relief from a recent nose surgery.

He told her he wouldn’t smoke weed on the property anymore however on June 15 she smelled weed coming from the suite again. She did not confront the tenants on that day but related the incidents to her parents.

The landlord Ms. Y.S. says that on returning home the landlords smelled weed again on July 7 and 20. They sent the tenants a formal letter warning them that smoking was not allowed.

She says that after that the landlords continued to smell weed at least twice a week. They sent the tenants a text. The tenants denied smoking.

On August 19 in the early morning she smelled a strong odour of weed and texted the tenants. The tenants denied smoking.

Again on August 22 the landlords detected the week smell. The landlord Mr. M.S. went to the suite. The tenants told him it was the butter chicken they had prepared or maybe the dryer vent. Ms. Y.S. says that she and her husband are of Indian origin and would know the smell of butter chicken. She shows that they had the dryer vent attended to by a professional but that it did not need cleaning.

The next incident was September 10 when Ms. Y.S. was awakened at 2:00 a.m. by the smell of weed. She texted the tenants who had friends over. The tenants denied smoking any weed. But noted that one of their friends did have marijuana in a backpack.

The next day the landlords found a friend of the tenants’ “vaping” tobacco in the yard.

The final incident occurred on September 22 when the landlords once again smelled weed. Mr. M.S. went to the tenants' door and was told it was not weed but was the smell of grilled cheese.

The Notice in question was issued the next day.

Both tenants testified that they have not been smoking weed in their suite or on the property.

Mr. R.R. says that he does not normally smoke weed. He says however that he had nose surgery and smoked it for pain relief for a short time, but never in the suite or on the property. He says he would go walking down the street to smoke it. He opines that perhaps the landlords smelled it on his clothes or smelled the pipe he had used. He denies telling the daughter that he had been smoking in the suite.

Ms. K.B. testified that she was present when the landlords' daughter was there and that there was no admission to having smoked on the property, only off the property and that it was suggested to her that maybe she had smelled Mr. R.R.'s clothes or his pipe.

She says she smokes weed only very occasionally and never on the property. She says Mr. R.R. does not smoke weed generally and confirms his evidence that weed smoke makes him anxious.

Analysis

The landlord Ms. Y.S. gave her evidence in a matter of fact and straightforward manner. She was believable. I am left with little doubt that the landlords are being disturbed by the smell of something.

At the same time, both tenants also gave convincing evidence. They were able to recount and explain each incident and were fervent in their denial of wrongdoing.

The burden of proof in these matters initially falls to the landlords to prove grounds for eviction on a balance of probabilities. I find that in this case the probabilities are equally balanced. The landlords have failed to satisfy the burden of proof and the tenants' application to cancel the Notice must be allowed.

This decision is not a decision that the tenants are smoking or are not smoking on the property, merely that it has not been proved on a balance of probabilities at this hearing.

If occurrences arise after the date of this Notice they may found grounds for a new Notice to End Tenancy.

The tenants' application also refers to "harassment" though they have not formally claimed any relief in that regard. As there is no claim for relief in that regard I refrain from adjudicating on that matter other than to say that a landlord entering a rental unit while the tenants are away in order to resolve a concern about the hot water heater may be entering properly. Similarly a landlord who has a tenant opening a door in front of him may in some circumstances mistake that action for an invitation to enter.

However, the law is clear, an uninvited landlord may only enter a rental unit in the case of emergency or by proper Notice issued under the *Act*.

Conclusion

The tenants' application is allowed. The Notice to End Tenancy dated September 23, 2016 is cancelled. There is no claim for recovery of any filing fee.

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 22, 2016

Residential Tenancy Branch