

Dispute Codes CNC

Introduction

This matter dealt with an application by the Tenant to cancel a Notice to End Tenancy for Cause.

The Tenant said she served the Landlord with the Application and Notice of Hearing (the “hearing package”) by registered mail on April 28, 2017. Based on the evidence of the Tenant, I find that the Landlord was served with the Tenant’s hearing package as required by s. 89 of the Act and the hearing proceeded with both parties in attendance.

Issues(s) to be Decided

1. Is the Tenant entitled to an Order to cancel the Notice to End Tenancy?

Background and Evidence

This tenancy started approximately 15 years ago. The Landlord purchased the complex a number of years ago but no new tenancy agreement was written. As a result the tenancy is verbal and on a month to month basis. Rent is \$525.00 per month payable on the first day of each month. The Tenant paid a security deposit of \$237.50 at the start of the tenancy and a pet deposit of \$250.00 during the tenancy.

The Landlord said he served the Tenant with a 1 Month Notice to End Tenancy for Cause dated April 10, 2017 by posting it on the door of the Tenant's rental unit on April 10, 2017. The Effective Vacancy Date on the Notice is May 31, 2017. The Landlord said the reason for the Notice to End Tenancy is that the Tenant is smoking in her rental unit and the smoking is bothering some of the other tenants in the complex. The Landlord said they had a previous dispute hearing where the Landlord believes a mutual agreement was made with the Tenant to stop smoking in the rental unit. The Landlord did not submit the decision but he read the decision at this hearing. The decision said that the Landlord retracted the previous 1 Month Notice to End Tenancy and the Tenant withdrew her application to dispute the Notice to End Tenancy. Further the Arbitrator made no reference to any agreement between the Parties and the Arbitrator said that because the application was withdrawn the Arbitrator made no ruling on the matter.

The Tenant said that no agreement was made with regard to her not smoking in the rental unit. The Tenant continued to say the Landlord just told her to stop smoking in the unit. Further the Tenant said she has been smoking in her unit for 15 years and this is a new issue for her. The Tenant said she believes the Landlord wants to move her out so he can renovate the rental unit and increase the rent. The Tenant said she is trying to move out because she does not want to be in a conflict with the Landlord and the other tenants, but she is unable to find alternative accommodations at this time. The Tenant said she has been a good tenant over the years always paying her rent on time and not causing any issues. The Tenant said she believes the verbal tenancy agreement allows her to smoke in the rental unit.

The Landlord said he does not want to end the tenancy and he has had no problems with the Tenant, but he is trying to protect the rights of his other tenants who the smoking bothers.

The Tenant said the Landlord issued a Notice of Rent Increase to \$545.00 per month starting in August, 2017 at the same time as the 1 Month Notice to End Tenancy for Cause. The Tenant said this is confusing. The Tenant continued to say that she does not know if the Landlord wants to end the tenancy or if he wants to continue the tenancy with a rent increase.

The parties were given an opportunity to settle this dispute between themselves. The Landlord offered the Tenant a reduction in rent to \$500.00 per month with no rent increase for one year. The Tenant said that she believes the original tenancy agreement and the now verbal tenancy agreement allows her to smoke in her rental unit. The Tenant said she has done nothing wrong and to quit smoking would be difficult for her so she declined the Landlord's offer.

The Tenant said in closing she has always liked the Landlord but she has done nothing wrong. The Tenant said she wants to continue the tenancy.

The Landlord said in closing he has nothing against the Tenant he just wants to stop the smoking and protect the right of his other tenants.

Analysis

It is apparent from the testimony and evidence that there are issues between the Tenant and the Landlord and some other tenants. The Landlord said he believes a mutual agreement to stop smoking in the Tenant's unit was made between the Tenant and himself from the first hearing. The Tenant said no agreement about stopping smoking was made and the tenancy agreement allows her to smoke in the rental unit.

I have reviewed the evidence submitted and the testimony given at the hearing and as a result the parties will abide by the following decision. Given that there is no written evidence to support a mutual agreement between the parties that the Tenant would stop smoking and there is no written tenancy agreement with a smoking clause in it; I accept the Tenant's testimony that the original tenancy agreement allows smoking in the rental unit and for 15 years this has been accepted. Consequently, I find for the Tenant that there is no non smoking restrictions on her rental unit.

In Section 47 (d) of the Act uses language which is written very strongly and it's written that way for a reason. A person cannot be evicted simply because another occupant has been disturbed or interfered with, they must have been **unreasonably** disturbed, or **seriously** interfered with. Similarly the landlord must show that a tenant has **seriously** jeopardized the health or safety or lawful right or interest of the landlord or another occupant, or put the landlord's property at **significant** risk.

In this case it is my finding that the reasons given for ending the tenancy have not reached the level of **unreasonableness, significance or seriousness** required by section 47(d) of the Residential Tenancy Act. I find in favour of the Tenant and Order the 1 Month Notice to End Tenancy for Cause date April 10, 2017 is cancelled and the tenancy is ordered to continue as set out in the verbal tenancy agreement.

Conclusion

I order the 1 Month Notice to End Tenancy for Cause dated April 10, 2017 is cancelled and the tenancy is ordered to continue as agreed in the verbal tenancy agreement.

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: May 31, 2017.

Residential Tenancy Branch