



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC

Introduction

This hearing was convened by way of conference call in response to the Tenant's Application for Dispute Resolution (the "Application") filed on May 26, 2017 to cancel a 1 Month Notice to End Tenancy for Cause (the "Notice").

Both parties appeared for the hearing and provided affirmed testimony. The Landlord confirmed that he had received the Tenant's Application by registered mail. The Tenant confirmed that apart from the Notice, she had not provided any evidence prior to this hearing and had received the Landlord's 12 pages of documentary evidence.

The hearing process was explained to the parties and they had no questions about the proceedings. Both parties were given a full opportunity to present evidence, call witnesses, make submissions to me, and to cross examine the other party.

Issue(s) to be Decided

Has the Tenant established that the Notice ought to be cancelled?

Background and Evidence

Both parties agreed that this tenancy started on December 15, 2015 for a fixed term which then continued on a month to month basis thereafter. The current rent payable for this tenancy is \$550.00 on the first day of each month.

The Tenant confirmed that she had been served with the Notice which was posted on her door on May 25, 2017 and was received by her on the same day. The Notice was provided into evidence and shows the reasons for ending the tenancy were because the

Tenant is alleged to have adversely affected the quiet enjoyment, security, safety or physical well-being of another occupant or the Landlord.

The Landlord testified that following a previous hearing held on April 13, 2017 with me, (the file number for which appears on the front page of this Decision), the parties had agreed the Tenant or her guests would not smoke in the rental unit. However, since that settlement agreement, the Tenant has breached it.

The Landlord pointed me to several documents he had provided into evidence to show that the building was a non-smoking residence and the Tenant had acknowledged this fact on the documents, as well as indicating she was a non-smoker.

The Landlord testified that on May 25, 2017 he entered the rental building, which is a four level apartment complex, with a work colleague who resides in the building only to discover the smell of marijuana smoke. The Landlord testified that the smell was emanating from the Tenant's rental unit which is next door to the stairwell and was the source of the smell. The Landlord testified that he went to the rental unit besides the Tenant, but that renter was in hospital so it could not have been her. The Landlord testified that he also went into the rental unit upstairs from the Tenant as he was there to do a repair, and the smell was not coming for that resident either.

The Landlord provided an email statement from the worker who he was with at the time of the event, in which the worker writes that he could smell marijuana smoke in the building and that it was tracked to the Tenant's rental unit. The Landlord stated that the worker was unable to appear for this hearing to provide direct testimony.

The Tenant disputed the Landlord's evidence and stated that the Landlord is trying to pin the smell of marijuana smoke coming from other rental units in the building on her. The Tenant denied the Landlord's allegations and stated that she does not appreciate being called a liar. The Tenant testified that on May 25, 2017 she was not at home, and in any case she does not smoke drugs or drink alcohol.

The Tenant stated that the Landlord's witness smokes marijuana in his room and that the witness and the Landlord are trying to pin the blame onto her.

The Landlord stated that he does not know whether the witness smokes marijuana but denied that the smell was coming from his room on May 25, 2017. The Landlord submitted that the Tenant's breach of the agreement not to smoke in the rental unit is having a negative impact on other residents in the building.

The Landlord was asked why he did not confront the Tenant in the rental unit on May 25, 2017 about the smell. The Landlord responded stating that he did not do so because the Tenant does not open the door and in any case would just lie about not smoking.

Analysis

Firstly, I find the Landlord served the Tenant with a Notice that complied with Section 52 of the Act and I accept that the Tenant received the Notice on the same day it was served, namely on May 25, 2017. Secondly, I find that the Tenant made the Application to dispute the Notice within the 10 day time limit stipulated by Section 47(4) of the Act.

When a landlord issues a tenant with a Notice for the reasons in this case, the landlord bears the burden to prove on the balance of probabilities, the reasons on the Notice disputed by the tenant.

In this case, I accept the undisputed evidence that the Tenant is not allowed to smoke substances of any kind in the rental building. I also accept that the parties had ratified and confirmed this agreement in the hearing that was held with me on April 13, 2017.

I find the Landlord relies on an email statement from a worker residing in the same building as evidence to support his oral testimony which the Tenant disputes. I find the Landlord failed to make this witness available to give direct testimony and be subject to cross examination, especially when the Tenant alleged that the source of the smoke is coming from the Landlord's witness. In any case, I find the witness evidence is not sufficiently independent for me to rely on this evidence along to make a determination that the tenancy should end.

In addition, I find the Landlord should have taken steps to ask and question the Tenant about the marijuana smoke in the building at the time they discovered it, in order to be confident as to the source of it. Instead, I find the Landlord and his worker deduced that it was likely coming from the Tenant's rental unit. This is not sufficient evidence for me to conclude the Tenant breached the previous settlement agreement. Furthermore, I had cautioned the Landlord in my April 13, 2017 Decision that he bears the burden to prove a notice to end tenancy issued to the Tenant in the future. In this case, I find the Landlord's evidence is weak and unconvincing. I find the evidence before me results in one party's word against the other's and I find the Landlord's evidence is no more compelling than the Tenant's evidence.

Conclusion

I find the Landlord has failed to provide sufficient evidence to prove the Tenant has breached a material term of the tenancy agreement and has adversely affected this tenancy. Therefore, the Landlord as failed to prove the Notice.

As a result, I grant the Tenant's request to cancel the Notice dated May 25, 2017. The tenancy will continue until it is ended in accordance with the Act.

This Decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the Act.

Dated: July 17, 2017

Residential Tenancy Branch