



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC

Introduction

On June 27, 2017, the Tenant submitted an Application for Dispute Resolution asking to cancel a 1 Month Notice to End Tenancy for Cause dated June 12, 2017, ("the 1 Month Notice").

The hearing was scheduled as a teleconference hearing. The Landlord and Tenant appeared at the hearing. The Landlord was assisted by her counsel. The hearing process was explained and the participants were asked if they had any questions. Both parties provided affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and make submissions to me.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Preliminary and Procedural Matters

During the hearing I determined that a document submitted by the Tenants was not disclosed to the Landlord. The Tenants testified that they intentionally did not provide the document to the Landlord because it relates to their health and medical issues.

The Landlord's counsel objected to the inclusion of the evidence as he has not had an opportunity to consider the evidence and respond to it.

I find that the Tenants failed to disclose the evidence to the Landlord and it would be procedurally unfair to the Landlord for me to consider the document in this hearing. The document is excluded from the hearing.

The Tenants were permitted to provide oral testimony regarding the document.

Issues to be Decided

- Does the Landlord have cause to end the tenancy and is he entitled to an order of possession?
- Should the Notice to End Tenancy be cancelled?

Background and Evidence

Both parties testified that the tenancy commenced on April 25, 2017, as a one year fixed term tenancy. Rent in the amount of \$900.00 is to be paid to the Landlord by the first day of each month. The Tenants paid a security deposit of \$450.00 and a pet damage deposit of \$100.00 to the Landlord. The parties provided a copy of the tenancy agreement.

The Landlord testified that the rental property is a house that contains an upper rental unit and a lower rental unit. The Tenants reside in the lower rental unit. Other occupants reside in the upper unit.

The Landlord testified that the Tenants are smoking marijuana on the property and that the occupants who live in the upper unit of the property have complained to her that they are being unreasonably disturbed by the smell.

The Landlord testified that after she received complaints from the upper occupants, she spoke to the Tenants about the complaints. The Landlord testified that despite raising and discussing the issue with the Tenants, the complaints continued. The Landlord testified that despite issuing a letter to the Tenants to cease and desist the use of marijuana the complaints continued.

The Landlord testified that she received numerous complaints about the smoke and odor of marijuana from the other occupants. The Landlord testified that the other occupants have small children and they are worried about the impact on their health.

The Landlord provided eight pages of documentation outlining the complaints and conversations that ensued between the parties.

The Landlord provided a copy of an email she received from the occupants dated August 8, 2017, regarding their concerns. The email indicates that from the day the Tenants moved in they have continuously smoked marijuana inside their suite. The email states that the smell comes into their suite usually on a daily basis. The email states that it is affecting their family and causing stress. The email indicates that it is also embarrassing when they have guests who question why their house smells like weed. The occupant indicates that the problem has caused his family to consider leaving the property.

The Landlord testified that there was no improvement with the Tenant's use of marijuana, so the Landlord issued the 1 Month Notice To End Tenancy For Cause.

The Landlord's counsel testified that the Landlord cannot ignore the complaints that she receives from the other occupants. He also submitted that smoking marijuana is illegal and the Tenants have not produced any licence from an authority that authorizes the use marijuana for medical reasons.

The Landlord testified that the Tenants were served a 1 Month Notice To End Tenancy For Cause dated June 12, 2017 by registered mail.

The reasons for ending the tenancy within the 1 Month Notice are as follows:

Tenant or a person permitted on the property by the Tenant has:

- Significantly interfered with or unreasonably disturbed another occupant or the Landlord

Tenant has 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 the Landlord

The Notice provides information for Tenants who receive the Notice. The Notice states that a Tenant has the right to dispute the Notice within 10 days after receiving it by filing an Application for Dispute Resolution at the Residential Tenancy Branch.

The Tenants testified that they received the 1 Month Notice on June 18, 2017 from the post office.

In response to the Landlords testimony, the Tenant Ms. R.P. testified that they are mature professionals who are legally allowed to possess and smoke marijuana. She submitted that they do not smoke marijuana in the rental unit.

The Tenant Mr. J.P. testified that they have tried going outside and that they would not have rented a place where they could not smoke inside. He acknowledged that he received a cease and desist letter from the Landlord that was dated May 24, 2017.

The Tenant J.P. testified that he asked the other occupant to text him if the occupant smells anything. He testified that the occupant did not text him, but called him a week later in anger stating that his whole house is blazing. The Tenant clarified that the term blazing means that there is smoke everywhere upstairs. The Tenant submitted that the occupant was exaggerating.

The Tenant Mr. J.P. acknowledged that the Landlord contacted them and raised the issue of the odor of marijuana on a couple of occasions prior to the Tenants receiving the cease and desist letter.

The Tenants submitted that they use marijuana for medical reasons and that there is no verbal or written agreement that the rental unit is designated as non-smoking. The Tenants submitted that they have a licence and stated that one of the occupants upstairs also has a licence to use marijuana.

In response, the Landlord's counsel submitted that the Landlord requested the Tenants to produce a licence that authorizes them to smoke marijuana for medical reasons. The Landlord's counsel submitted that the Tenants refused to produce a licence in support of a medical reason to use marijuana.

The Tenants submitted that they provided the Residential Tenancy Branch with a document showing their licence. That document was excluded from the hearing for reasons explained earlier in this decision.

The Tenants submitted in their evidence that the delivery of their medication does not allow for any burned or exhaled smoke to rise in the air. The medication is taken and exhaled outside.

Analysis

The Residential Tenancy Branch Policy Guideline #6 Entitlement to Quiet Enjoyment states:

A landlord is obligated to ensure that the tenant's entitlement to quiet enjoyment is protected. A breach of the entitlement to quiet enjoyment means substantial interference with the ordinary and lawful enjoyment of the premises. This includes situations in which the landlord has directly caused the interference, and situations in which the landlord was aware of an interference or unreasonable disturbance, but failed to take reasonable steps to correct these.

Based on the above, the testimony and evidence of the parties, and on a balance of probabilities, I find as follows:

I find that there is no term in the tenancy agreement that prohibits the Tenants from smoking in the rental unit.

On the issue within the 1 Month Notice of whether or not the Tenants have engaged in illegal activity, I make the following findings.

I find that it is common knowledge that the possession of marijuana is illegal. Despite its illegality, I accept that some people are authorized to use marijuana for medical reasons. I find that the Tenants provided insufficient evidence that they are authorized to use marijuana for medical reasons. There is no medical evidence before me to support their submission that they are licensed to use marijuana for medical reasons.

Based on the Tenants testimony that they have tried going outside and that they would not have rented a place where they could not smoke inside, and their submission that the medication is taken and exhaled outside, I find that the Tenants engaged in illegal activity by smoking marijuana in and on the rental property.

I do not find that the smoking of marijuana is in itself sufficiently serious enough to warrant ending the tenancy. I find that further consideration must be given to the impact that the smoking had on the right to quiet enjoyment of the other occupants.

On the issue of whether the smoking has, or is likely to adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant, I make the following findings:

Regardless of whether a tenancy agreement permits smoking in a rental unit, and regardless of what substance is being smoked, Tenants and Landlords are responsible to ensure that their smoking is not unreasonably affecting or adversely affecting another occupant.

The Landlord has an obligation under the Act to protect a Tenants entitlement to quiet enjoyment. I find that the Landlord made numerous attempts to try and work with the parties to resolve the matter.

I accept the Landlord's evidence that the upper occupants submitted numerous complaints about the odor of marijuana and the smoking of marijuana coming from the Tenant's unit. I accept the Landlord's evidence that the odor of the marijuana was very strong and it affected the occupants' enjoyment of the property.

I find that the Tenant's use of marijuana on the rental property unreasonably disturbed another occupant on the rental property. I find that the Landlord has sufficient cause to end the tenancy.

The Tenants request to cancel the 1 Month Notice To End Tenancy For Cause dated June 12, 2017 is dismissed.

Under section 55 of the Act, when a Tenants application to cancel a Notice to end tenancy is dismissed and I am satisfied that the Notice to end tenancy complies with the requirements under section 52 regarding form and content, I must grant the Landlord an order of possession.

I find that the 1 Month Notice issued by the Landlord meets the requirements for form and content. I find that the Landlords are entitled to an order of possession effective no later than 1:00 pm on August 31, 2017, after service on the Tenants. This order may be filed in the Supreme Court and enforced as an order of that Court.

Conclusion

I find that the Tenant's use of marijuana on the rental property is unreasonably disturbing another occupant on the rental property. I find that the Landlord has sufficient cause to end the tenancy.

The Tenants request to cancel the 1 Month Notice To End Tenancy For Cause dated June 12, 2017 is dismissed.

The Landlord is granted an order of possession effective no later than 1:00 pm on August 31, 2017, after service on the Tenants.

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: August 25, 2017

Residential Tenancy Branch