



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, FF

Introduction

This hearing was convened in response to an application by the Tenant pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

1. An Order cancelling a notice to end tenancy - Section 47; and
2. An Order to recover the filing fee for this application - Section 72.

The Landlord and Tenant were each given full opportunity under oath to be heard, to present evidence and to make submissions.

Issue(s) to be Decided

Is the notice to end tenancy valid for the stated reasons?

Is the Tenant entitled to recovery of the filing fee?

Background and Evidence

The following are agreed facts: The tenancy, under written agreement, started on January 15, 2018 on a fixed term to end January 15, 2019. Rent of \$1,300.00 is payable on the 15th day of each month. At the outset of the tenancy the Landlord collected \$650.00 as a security deposit. The tenancy agreement does not prohibit smoking in the unit. On May 29, 2018 the Landlord served the Tenant in person with a one month notice to end tenancy for cause (the “Notice”). The Notice contains three stated reasons:

- Tenant has allowed an unreasonable number of occupants in the unit;

- Tenant or person permitted on the property by the Tenant has put the Landlord's property at significant risk; and
- Tenant or person permitted on the property by the Tenant has engaged in illegal activity that has, or is likely to,
 - damage the landlord's property;
 - adversely affect the quiet enjoyment, security, safety, or physical well-being of another occupant;
 - jeopardize a lawful right or interest of another occupant or the landlord.

The Landlord states that a person was occupying the unit. The Landlord states that this person is no longer in the unit as told to the Landlord by the Tenant. The Landlord states that he has no idea when the person occupied the unit and that it is only a suspicion based on this person being seen frequently at the unit. The Tenant states that she had a guest for a period of four weeks, that the Landlord was informed of this guest and that the Tenant gave the Landlord additional monies for the extra usage of utilities.

The Landlord states that the Tenant has put the property at significant risk by smoking in the unit. The Landlord states that this is a fire hazard and can cause damage to the interior. The Landlord states that he has no visual evidence of any damage to the unit and that only a smell was noticed on an inspection that occurred on May 29, 2018, after the date the Notice was issued. The Landlord states that there is no restriction on smoking in the unit in the tenancy agreement but that the building has a no smoking policy. The Landlord states that candles are allowed to be burned in the unit. The Tenant states that she was not a smoker when the tenancy started but that since then the Tenant has occasionally smoked in the unit. the Tenant states that she otherwise smokes on the balcony. The Tenant states that she regularly burns candles in the unit and that the Landlord has never told her that she could not burn candles. The Tenant states that there is no damage in the unit caused by her cigarette smoking inside the unit.

The Landlord states that the Tenant is engaging in the illegal activity of smoking crack in the unit. The Landlord states that he was made aware of this on April 6, 2018 when another tenant complained about a chemical smell from the unit. The Landlord states that this tenant also informed the Landlord that the Tenant told this tenant in the past that she smoked crack inside the unit. The Landlord states that other tenants have complained about the crack smoking to the concierge. The Landlord provides a witness letter from the concierge and another tenant. The Landlord states that he himself has smelled the chemical smell. The Landlord states that he has no evidence that the crack smoking will likely damage his property. The Landlord states that other tenants are concerned about the frequent visitors to the unit but that the Landlord has no evidence of any trafficking at the unit. The Landlord states that one tenant has complained that the frequent visitors make this tenant feel unsafe. The Landlord states that the concierge also reports that a visitor to the Tenant's unit also let some young men into the building, that those young men were seen in the garage, and that nothing was done by the young men. The Tenant denies smoking crack or carrying out any other illegal activity in the unit. The Tenant provides a copy of a drug test taken June 20, 2018 and I note that the test indicates that none of the drugs tested for, including cocaine, were found in the Tenant's blood.

Analysis

Section 47 of the Act provides that a landlord may end a tenancy for cause. Ending is tenancy is a serious matter. Where a notice to end tenancy comes under dispute, the landlord has the burden to prove, on a balance of probabilities, that the tenancy should end for the reason or reasons indicated on the notice and that at least one reason must constitute sufficient cause for the notice to be valid. Given the Landlord's lack of evidence in relation to the length of time that a person was in the Tenant's unit with only a suspicion that the person was occupying the unit and considering the Tenant's evidence that the person was a guest, I find on a balance of probabilities that the

Landlord has not substantiated that the Tenant had an unreasonable number of occupants in the unit.

There is nothing in the tenancy agreement that restricts smoking. Had the Landlord been concerned that smoking in the unit would cause a significant risk to the property the tenancy agreement should have reflected this concern and restricted smoking. The Landlord provided no supporting evidence that smoking is a significant risk any more than burning candles. The mere smell of smoke in a room does not equate to the inevitable occurrence of significant damage. As such I find on a balance of probabilities that the Landlord has not substantiated that the Tenant has put the property at significant risk by smoking.

The Landlord has evidence of a chemical smell from around the unit and the Landlord's argument is that the Tenant is causing this smell by smoking an illegal substance. While the Landlord provides evidence that the Tenant admitted to smoking an illegal substance in the past, this evidence does not indicate that the Tenant continues to smoke an illegal substance in the unit and I consider that the Tenant's blood test provides significantly weighty evidence that the Tenant has not been smoking any illegal substance anywhere. The only evidence of any adverse effect on another tenant is a safety concern in relation to the frequency of visitors however there is no evidence of any trafficking of an illegal substance associated with the visitors. Even if it could be accepted that a guest was smoking an illegal substance in the unit, and I note that the Landlord did not make any allegations or provide any evidence that the Tenant's visitors were smoking an illegal substance in the unit, the Landlord has no evidence that this smoking or the smell from the smoking will likely damage his property. For the above reasons I find that the Landlord has not substantiated any of the stated reasons on the Notice. I find therefore that the Notice is not valid and that the Tenant is entitled to its cancellation. The tenancy continues.

As the Tenant has been successful with its claim to cancel the Notice I find that the Tenant is entitled to recovery of the **\$100.00** filing fee and the Tenant may deduct this amount from future rent payable in full satisfaction of this claim.

Conclusion

The Notice is cancelled and the tenancy continues.

I grant the Tenant an order under Section 67 of the Act for **\$100.00**. If necessary, this order may be filed in the Small Claims Court and enforced as an order of that Court.

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 08, 2018

Residential Tenancy Branch