



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding AUSTERVILLE PROPERTIES
LTD and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes: CNC, FF

Introduction

This hearing dealt with an application by the tenants for an order to set aside a notice to end tenancy for cause and for the recovery of the filing fee. Both parties attended this hearing and were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. The tenants attended along with their advocate. The landlord was represented by their agents.

As both parties were in attendance I confirmed service of documents. The parties confirmed receipt of each other's evidence. I find that the parties were served with evidentiary materials in accordance with sections 88 and 89 of the *Act*.

Issue to be Decided

Does the landlord have grounds to end this tenancy?

Background and Evidence

The tenancy began on July 01, 2018 for a fixed term of one year. On May 07, 2019, the landlord served the tenants with a one-month notice to end tenancy for cause. The tenants disputed the notice in a timely manner. The notice to end tenancy alleges that the tenant has allowed an unreasonable number of occupants in the unit, has significantly interfered with or unreasonably disturbed another occupant, has adversely affected the quiet enjoyment, security, safety or physical well-being of another occupant and has breached a term of the tenancy agreement.

The landlord stated that in the first week of March 2019, a strong smell of Marijuana was reported to be emanating out of the rental unit. The landlord contacted the tenants and a meeting was set up to address the issue. The landlord stated that the tenants apologized and assured him that it would not happen again. The tenants stated that they had had a visitor and during that visit they both stepped out to attend classes.

The tenants agreed that it could have been the visitor who smoked Marijuana in their absence. The tenants both stated that they do not smoke as they are members of an athletic team of the university they attend. The landlord served the tenant with a warning letter dated March 07, 2019.

The landlord stated that on April 18, 2019, they received a complaint of the smell of Marijuana coming from the rental unit. The landlord stated that he knocked on the door and the tenant JV asked him to come back later. The landlord returned later and did an inspection of the unit and stated that there was an odour of air freshener which according to the landlord was a cover up for the odour of Marijuana.

JV stated that he asked the landlord to return later because his girlfriend was present in the unit. JV denied smoking in the rental unit and stated that he had exams at the time. JV also stated that he has an air freshener on going in the apartment which is not a spray bottle, and which would account for the odour of air freshener that the landlord was describing. The landlord agreed that since April 18, 2019 there have been no complaints of the odour of Marijuana from the rental unit.

The landlord testified that on May 05, 2019, an unregistered person was observed using the tenant's fob to gain entry to the building. The landlord contacted the tenants. The tenants agreed that they had moved out of the rental unit temporarily for summer and had allowed a friend to occupy the unit for the period of April 25 to May 7, 2019. On May 07, 2019 the landlord served the tenants with a notice to end tenancy for cause. The tenants' guest moved out that day. The landlord stated that there have been no breaches since then.

Analysis

In order to support the notice to end tenancy, the landlord must prove at least one of the grounds alleged, namely that the tenant has allowed an unreasonable number of occupants in the unit, has significantly interfered with or unreasonably disturbed another occupant, has adversely affected the quiet enjoyment, security, safety or physical well-being of another occupant and has breached a term of the tenancy agreement.

Based on all the evidence before me, I accept that the tenants behaved inappropriately by permitting a guest to smoke Marijuana inside the unit on March 05, 2019. I also accept the tenant's evidence that he was studying for exams on April 18, 2019. Based on a balance of probabilities I find that it is more likely than not that the tenant was not smoking Marijuana during a time when he was studying for his exams.

From the evidence and testimony of both parties, it appears that the incident on March 05, 2019 which involved smoking Marijuana by a guest of the tenants was isolated and not an ongoing pattern of behaviour for these tenants.

I further find that the tenants allowed a friend to occupy the rental unit in their absence but corrected the situation immediately upon being admonished by the landlord. The landlord agreed that other than this time, the tenants have not sublet the unit.

While I accept that the tenants behaved inappropriately with regard to permitting the smoking of Marijuana in the rental unit and subletting the rental unit without permission, I find that the tenants rectified both situations immediately upon being notified by the landlord and therefore I am not satisfied that the actions of the tenants justify bringing this tenancy to an end. Accordingly, I allow the tenants' application and set aside the landlord's notice to end tenancy dated May 07, 2019. As a result, the tenancy shall continue in accordance with its original terms.

The tenants would be wise to refrain from giving the landlord and other occupants of the residential complex, reason to complain. I find it timely to put the tenants on notice that, if such behaviours were to occur again in the future and another notice to end tenancy issued, the record of these events would form part of the landlord's case should it again come before an Arbitrator, for consideration.

Since the tenants are successful in their application, I award the tenants the filing fee.

Conclusion

The notice to end tenancy is set aside and the tenancy will continue.
The tenants may make a onetime deduction of \$100.00 from a future rent.

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: June 20, 2019

Residential Tenancy Branch