



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, FFT

Introduction

This hearing dealt with an Application for Dispute Resolution by the tenant to cancel a One Month Notice to End Tenancy for Cause (the "Notice") issued on July 27, 2021 and to recover the cost of the filing fee.

Both parties appeared, gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and make submissions at the hearing. All parties confirmed under affirmation that they were not recording the hearing.

The parties confirmed receipt of all evidence submissions and there were no disputes in relation to review of the evidence submissions.

Issue to be Decided and Analysis

Should the Notice be cancelled?

Background , Evidence

The tenancy began on June 1, 2016.. Rent in the amount of \$850.00 was payable on the first of each month. A security deposit of \$375.00 was paid by the tenant. Filed in evidence is a copy of the Notice.

At the outset of the hearing the parties discussed the issues set out in the Notice, which is smoking in the rental unit. However, under the terms of the tenant's tenancy agreement signed on June 16, 2016, the tenant is allowed to smoke in their rental unit. I find a landlord cannot take away the tenants rights under that agreement simply because ownership has changed, and they want to make the building a non-smoking building.

In this case the Notice, alleged a breach of a material term; the tenant or a person permitted on the property has seriously jeopardized the health safety or lawful right of another occupant or the landlord and put the landlord's property at significant risk.

The details in the Notice is smoking in unit/nuisance. I find this is insufficient details to support the Notice and simply being a nuisance is not grounds to end the tenancy.

Based on the discussion and details in the Notice, I find the Notice must be cancelled as there is no breach of a material term and no evidence that the tenant has seriously jeopardized the health safety or lawful right of another occupant or the landlord or has put the property as serious risk.

As I have granted the tenant's application to cancel the Notice, I find the tenant is entitled to recover the cost of the filing fee. Therefore, I authorize the tenant a onetime rent reduction in the amount of \$100.00 from a future rent payable to the landlord.

Although, I have cancelled the Notice, I find the tenant must do what is ever reasonable to ensure their smoking does not escape their rental unit into other rental units or common areas of the building as this could significantly interfere with the rights of other occupants, if proven. The tenant at the hearing stated they have purchased an air purifier which has helped and are looking for a better device.

Conclusion

The tenant's application to cancel the Notice is granted. The tenant is entitled to a onetime rent reduction from a future rent payable to the landlord to recover the cost of the filing fee.

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: December 13, 2021

Residential Tenancy Branch