

DECISION

Dispute Codes CNC, MNDC, FF

Introduction

This hearing was convened by way of conference call to deal with the tenant's application for an order cancelling a notice to end tenancy for cause, for a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement and to recover the filing fee from the landlord for the cost of this application.

The landlord called two witnesses, who are employees and assist with the management of the apartment complex. Both witnesses, as well as the landlord and the tenant gave affirmed testimony and were subject to cross examination on their evidence.

Issues(s) to be Decided

Is the tenant entitled to an order cancelling a notice to end tenancy for cause?

Is the tenant entitled to a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement?

Background and Evidence

This month-to-month tenancy began on October 1, 2008. Rent in the amount of \$850.00 is payable in advance on the 1st day of each month, and there are no rental arrears. At the outset of the tenancy, the landlord collected a security deposit from the tenant in the amount of \$425.00.

The parties advised that a notice to end tenancy was issued on March 7, 2010 because the landlord's agent had been to the door of the tenant's residence and smelled a strong odour of marijuana. The parties were before a Dispute Resolution Officer with respect to that notice, and the notice was cancelled because the landlord had used an old form and it was not the approved form as required by the *Act*.

The landlord, after receiving that Decision, served another notice to end tenancy upon the tenant for the same single incident. That notice states that, "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; and jeopardize a lawful right or interest of another occupant or the landlord." The witness stated that smoking of any kind is prohibited and that it is clear on the tenancy agreement, and therefore the 2nd notice was personally served on the tenant on May 20, 2010 at her place of employment. A copy of that notice was provided in advance of the hearing. It is dated May 13, 2010 and has an expected vacancy date of June 30, 2010. The witness further stated that smoking on balconies is permitted.

When questioned if the landlord or witnesses had smelled marijuana coming from that residence since March when the first notice to end tenancy was issued, they all responded that there were no other issues.

The tenant testified that she is a non-smoker and lives alone. No one has smoked in her unit, and she is not sure what the landlord had smelled. She stated that the landlord was closer to the neighbour's apartment than hers. She also testified that she had a drug test completed and provided the results of that test in advance of the hearing to attest to the fact that the marijuana smoke smelled by the landlord and witness, if there was any at all, was not her nor in her unit.

The tenant further testified that she had asked the landlord numerous times to fix or replace the knob on the air conditioning unit and that it still has not been fixed. She provided copies of several letters in advance of the hearing, which are denied by the landlord as ever being received. She stated that the landlord's agent went into her residence when she wasn't home and glued it back together. It still didn't work, so she taped it to the door of the manager's residence as she had been instructed to do, and she was told that it was an old air conditioning unit and finding another knob might be difficult. She stated that he still has the old knob.

The tenant further testified that she fell in the parking lot on December 29, 2008 because the landlord had neglected to plough it, and hurt her back.

The tenant is claiming \$600.00 for being without air conditioning for 4 months, June through September, 2009, and her loss of wages due to the fall in December, in the amount of \$674.00.

Analysis

Firstly, dealing with the notice to end tenancy, I rely on the Residential Tenancy Policy Guideline #32 which states as follows:

“In considering whether or not the illegal activity is sufficiently serious to warrant terminating the tenancy, consideration would be given to such matters as the extent of interference with the quiet enjoyment of other occupants, extent of damage to the landlord’s property, and the jeopardy that would attach to the activity as it affects the landlord or other occupants. For example, it may be illegal to smoke a single marijuana cigarette. However, unless doing so has a significant impact on other occupants or the landlord’s property, the mere smoking of the marijuana cigarette would not meet the test of an illegal activity which would justify termination of the tenancy.”

The landlord is relying on one single incident which cannot be proven, however, the landlord has a responsibility to provide quiet enjoyment to other tenants within the building. The No Smoking Anything policy is taken seriously by the landlord, but I cannot find that the single incident, which is denied by the tenant, is sufficient even if the tenant admitted it. I further find that no person was significantly impacted by that illegal activity.

With respect to the tenant’s application for a monetary order for the air conditioning unit knob, I find that the tenant ought not to have been without an air conditioner even if the knob was broken for that amount of time. Therefore, I find that the tenant has failed to justify the claim.

With respect to the tenant’s application regarding the slip and fall, I can only enforce the provisions of the *Residential Tenancy Act* and the tenancy agreement for which there are no provisions regarding snow removal or liability for injuries.

Conclusion

For the reasons set out above, the notice to end tenancy is hereby cancelled.

The tenant's application for a monetary order is hereby dismissed without leave to reapply.

I order that the landlord comply with Section 32 of the *Act* by replacing or repairing the knob on the air conditioning unit.

Since the tenant has been partially successful with her claim, I order that the tenant recover the \$50.00 filing fee from the landlord, and order that the tenant be permitted to reduce the next month's rent by that amount.

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: July 20, 2010.

Dispute Resolution Officer