



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, OLC, RP, RR, O

Introduction

This hearing was convened by way of conference call in repose to the tenants application to cancel a Notice to End Tenancy for cause; for an Order for the landlord to comply with the *Residential Tenancy Act (Act)*, regulations or tenancy agreement, for an order for the landlord to make repairs to the unit, site or property; and for an order to allow the tenant to reduce rent for repairs, services or facilities agreed upon but not provided.

The tenant, the tenants advocate and the landlords agent attended the conference call hearing, gave sworn testimony and were given the opportunity to cross exam each other on their evidence. The landlord and tenant provided documentary evidence to the Residential Tenancy Branch and to the other party in advance of this hearing. All evidence and testimony of the parties has been reviewed and are considered in this decision.

Preliminary Issues

RTB Rules of Procedure 2.3 states that “if in the course of a dispute resolution proceeding, the dispute resolution officer determines that it is appropriate to do so, the Dispute Resolution officer may dismiss unrelated disputes contained in a single application with or without leave to reapply.” In this regard I find the tenant has applied for an Order for the landlord to comply with the *Act*, regulations or tenancy agreement, for an order for the landlord to make repairs to the unit, site or property; and for an order to allow the tenant

to reduce rent for repairs, services or facilities agreed upon but not provided. As these issues are unrelated to the main issue which is to cancel the Notice to End Tenancy, I am not prepared to hear these issues at this hearing and these unrelated issues are dismissed with leave to reapply.

Issue(s) to be Decided

- Is the tenant entitled to have the One Month Notice to End Tenancy cancelled?

Background and Evidence

Both parties agree that this tenancy started on May 06, 2012. There is no written tenancy agreement in place and the parties have a verbal agreement for the tenant to rent this unit on a month to month basis for a monthly rent of \$600.00 due on the first day of each month in advance.

The landlord's agent testifies that the tenant was served a One Month Notice to End Tenancy on May 25, 2012 in person. This notice has an effective date of June 30, 2012 and gives the following reasons to end the tenancy:

- 1) *the tenant or a person permitted on the residential property by the tenant has*
 - (i) *Seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant, or*
 - (ii) *Put the landlord's property at significant risk;*
- 2) *The tenant or a person permitted on the residential property by the tenant has engaged in illegal activity that has or is likely to*
 - (i) *Damage the landlords' property*

3) The tenant has breached a material term of the tenancy agreement which was not corrected within a reasonable time after written notice to do so.

The landlords agent (GV) testifies that he had a medical procedure carried out on his chest which his doctor wrote to advise that GV, who is the son of the landlord, must avoid all smoke and other pollutants. Second hand smoke will put GV at risk and he has been asked to avoid all second hand smoke. This letter has been provided in evidence. GV testifies that the tenant has been smoking in her unit and the smell of smoke filters into the landlords unit contaminating their downstairs living room, dining room and kitchen. GV testifies that all members of his family and GV's girlfriend can all smell the smoke and they have signed a witness letter to this effect. GV testifies that visitors to their house have also smelt smoke and GV's sister's clients to her make up business located in the family home have also reported the smell of cigarette smoke.

GV states that he has never seen the tenant smoking in her unit but the landlord and GV's sister did see the tenant smoking in her doorway on the day the tenant moved in. GV testifies that they called a plumber to the tenants unit to fix a sink the plumber also reported a strong smell of cigarette smoke and the smell of marijuana. The landlord has provided a letter from the plumber in evidence. GV testifies that the unit was advertised as a non smoking unit and when the landlord asked the tenant if she smoking on May 06, 2012 the tenant told the landlord that she does not smoke.

GV testifies that due to the tenant smoking in the rental unit the smoke will have likely caused damage to the unit which will have to be dealt by restoration of the unit when the tenant moves out. GV testifies that although they have no evidence that the tenant does smoke marijuana in the unit the letter from the plumber does state he could smell marijuana and as this is an illegal activity it would also be grounds to end the tenancy.

GV challenges the tenants letters sent in evidence. One letter dated May 30, 2012 written by the tenant states that the tenant does not smoke. The other letter dated June

10, 2012 states that the tenant had quit smoking prior to moving in and that due to the stress there has been a couple of occasions on which the tenant has smoked.

The landlord's agent GV requests that the One Month Notice to End Tenancy is upheld and orally requests an Order of Possession at the hearing to be effective on the date given on the Notice.

The tenant testifies that when she rented the unit she was in the early stages of quitting smoking. The tenant agrees that due to the stress caused by the landlord she has had an occasional cigarette but testifies that she has never smoked inside the unit and will either smoke outside or off the property. The tenant states that although there is nothing in writing about smoking on the property, the tenant would not jeopardize her living space by smoking inside the unit. The tenant testifies that she uses gum to stop smoking and has an electric cigarette that contains no nicotine.

The tenant testifies that she has never been given any warning letters and there is no tenancy agreement in place that indicates that no smoking is allowed on the property. The tenant disputes the landlords claims that she has smoked in the unit and that the smell of smoke filters into the landlord's living space. The tenant states there is one door between her unit and the landlord's living space which the tenant uses as a closet space and there is also a smoke detector located there.

The tenant disputes the landlords and the landlord's plumbers claim that she smokes marijuana or any illegal substance. The tenant testifies that she had regular urine tests done at the doctors to detect drugs and the tenant's doctor has written two letters to prove that the tenant has tested negative for any drugs. The tenant disputes the landlord's plumber's claims that there is a strong smell of smoke in the unit. The tenant states she was only just getting home when the plumber was there and had not been smoking. The tenant testifies that she does like her unit to smell nice so does use fragrances defuses in her unit.

The tenant questions the validity of this Notice as on the day the tenant was moving into the unit the landlord gave the tenant an eviction notice saying the landlords family were moving into the unit. The tenant filed an application to dispute that notice and the landlord withdrew that notice at that hearing. The tenant states that it seems that the landlord wants her to move out.

The tenant testifies that she had sent a letter to the landlord before she moved into the unit which informed the landlord about the tenant and the kind of person the tenant is. It also informed the landlord that the tenant does smoke very minimally and outside. The tenant has provided a copy of this letter in evidence.

The tenants advocate summarizes the tenants testimony and states there is no tenancy agreement in place so the tenant has not breached a material term of a tenancy agreement; the landlord has not given the tenant any written notice of a breach of a material term; the tenant does not smoke marijuana or use any other drugs; the tenant does not smoke in the rental unit so has not put the landlords property at risk and the tenant has not jeopardized the health, safety or lawful right of the landlord.

Analysis

I have carefully considered all the evidence before me, including the sworn testimony of both parties. In this matter, the landlord has the burden of proof and must show (on a balance of probabilities) that grounds exist (as set out on the Notice to End Tenancy) to end the tenancy. This means that if the landlord's evidence is contradicted by the tenant, the landlord will generally need to provide additional, corroborating evidence to satisfy the burden of proof.

The landlord has provided a written statement signed by family members and a written statement from the plumber, however none of these statements have been affirmed before a notary and the landlord has not called any of these witnesses to give evidence

under oath or submit to cross examination by the tenant. Consequently, I can place little weight on this documentary evidence especially when it is disputed by the tenant.

Therefore, it is my decision that the landlord has not shown that the tenant has smoked either cigarettes or marijuana in the rental unit, and in the absence of any corroborating evidence, I find that the landlord has not provided sufficient evidence to show that grounds exist to end the tenancy and as a result, the Notice is cancelled and the tenancy will continue.

Conclusion

The tenant's application is allowed. The one Month Notice to End Tenancy for Cause dated May 25, 2012 is cancelled and the tenancy will continue.

The remainder of tenants claim is dismissed with leave to reapply.

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 27, 2012.

Residential Tenancy Branch