



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards
Ministry of Housing and Social Development

DECISION AND REASONS

Dispute Codes

CNC

Introduction

This hearing dealt with an application by the tenants seeking to have a one month Notice to End Tenancy for cause set aside. Both parties appeared for the hearing and were provided the opportunity to be heard and to respond to the evidence of the other party.

I amended the tenant's application to reflect the legal name of the landlord.

Issue to be Determined

Should the one month Notice to End Tenancy for cause be set aside?

Background and Evidence

This tenancy began on February 1, 2001 for the monthly rent of \$728.00 and a security deposit of \$310.00 paid on January 18, 2001. The dispute between the parties is respecting whether the tenants' smoking is unreasonably disturbing another occupant or the landlord.

The landlord acknowledges that the tenants have the right to smoke in their rental unit and that there is no term in the tenancy agreement excluding the right of the tenants to smoke in the unit. However, the landlord states that the tenants have failed to reasonably take measures to reduce or mitigate the effects of their smoking on other occupants and the landlord.

The landlord provided written documentation which demonstrated their fair and reasonable approach with the tenants in an attempt to resolve the issue to the satisfaction of all parties. This included the original offer by the landlord to purchase an air purifying machine for the tenants. The landlord had used a similar machine in other circumstances with success. The landlord had air quality testing completed and then requested that the tenants use the air purifier for four days. The landlord stated that there was a significant improvement in the smell and occurrence of smoke in other units on the first day the machine was used.

However, the landlord states that the tenants refused to use the machine beyond the one day and also were unwilling to keep the machine in a location in the rental unit where it would be most effective. The landlord also submitted that the tenants will not

use the fan in the bathroom which will also help control the fumes and smells resulting from their smoking.

Based on their perception that the tenants were unwilling to cooperate or work with them to reach a mutual resolution the landlord made the following offer to the tenants:

1. That the landlord would purchase the air purifier and the tenants could reimburse the landlord with a slight increase to their monthly rent;
2. The parties could reach a mutual agreement to end the tenancy; or
3. The landlord would serve a one month Notice to End Tenancy for cause.

The landlord states that the tenants were unwilling to discuss the situation and requested that they be served with a one month Notice to End Tenancy.

The landlord also provided evidence from another occupant would have indicated that if nothing is done about the smell and fumes from the smoking she will give her notice to vacate. The landlord stated that the landlord has gone over and beyond to respect the tenants and reach a mutual agreement and believes that the tenants have acted in bad faith throughout the process. The landlord also submitted that she has no faith that the tenants will follow through with any commitments to now use filters or other means to resolve the problem.

The landlord requested that the Notice to End Tenancy be upheld and requested an Order of Possession.

The tenants had very little to add to the hearing except to state that they have purchased two air filters as of March 14, 2009, approximately one week prior to the hearing. The tenants also denied turning off the air purifier as claimed by the landlord but acknowledged that they did not want to use the bathroom fan as it is noisy.

The tenants submitted that they are now willing to purchase and use an air purifier in an attempt to alleviate the impact of their smoking on other occupants.

Analysis

There are no laws currently that deny people the right to smoke cigarettes in their home. However, smoking cigarettes can be banned in a tenancy agreement if it is an agreed upon material term of the tenancy. Therefore, in the circumstances before me the tenancy cannot be ended on the basis that the tenants smoke in their rental unit as all parties agree there is no material term of the tenancy prohibiting smoking. However, the tenants are responsible for taking reasonable steps to ensure they are not unreasonably disturbing or significantly interfering with the quiet enjoyment of other occupants or the landlord. This can be a ground for ending a tenancy.

Although I am persuaded by the evidence of the landlord which demonstrated that the tenants have been uncooperative in resolving this issue, I am not satisfied that their response was an expected reaction of individuals who understood that they have a right to smoke in their rental unit. I am also not satisfied that the landlord has demonstrated

that the tenants did not use the air purifier as claimed. The landlord has only reached that conclusive on speculative third hand conversations.

The tenants expressed a willingness in the hearing to take more measures to balance their right to smoke in the rental unit with their obligation to mitigate the impact smoking has on other occupants of the rental building. During the hearing several recommendations were made including to investigate the effectiveness of the two air filters the tenants are no using, to investigate the use of the bathroom fan and to possibly revisit the use of the air purifier as originally recommended by the landlord.

I remind the tenants that they have an obligation to respect the quiet enjoyment of other occupants and a duty to mitigate their impact of smoking on other occupants. However, I am not satisfied that the grounds to end this tenancy have been met at this time.

I grant the tenant's application and I set aside the one month Notice to End Tenancy. The tenancy remains in full force and effect.

Conclusion

I have granted the tenants' application and set aside the one month Notice to End Tenancy. However, I deny the tenants' request to recover the \$50.00 filing fee paid from the landlord. I find that the tenants forced this issue to dispute resolution despite the landlord's clear attempts to reach a mutual and satisfying resolution for all parties. I find that the tenants are responsible for the cost of this proceeding.

Dated March 24, 2009.

Dispute Resolution Officer