



Dispute Resolution Services

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

DECISION

Dispute Codes: CNC & FF

Introduction:

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

Although a witness was brought into the hearing, I have disregarded this evidence. I did not find the witnesses' evidence to be helpful or credible. I have determined this matter solely on the evidence and testimony of the applicant and respondent.

Issue to be Determined:

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

Background and Evidence:

This tenancy began on December 1, 2006 for the monthly rent of \$950.00 and security deposit of \$475.00. The tenancy agreement originally had two co-tenants. The tenant submits that in March or April 2007 one of the co-tenants vacated the rental unit and since that time she has had roommates to help cover the rent. The tenant stated that they informed the former resident manager that one of the co-tenants had vacated and expected that the tenancy agreement would have been changed to reflect this.

The tenant subsequently seems to have had a few roommates. The tenant provided two hand written notes from former roommates indicating that they would be vacating. I have no evidence that the landlord ever received copies of these notes or had any knowledge of the tenant's roommates.

In October 2008 the current resident manager became aware that there were unauthorized occupants in the tenant's rental unit. The resident manager provided the tenant with a warning letter on October 15, 2008 indicating that she was in breach of the tenancy agreement. The landlord stated that the tenant had breached the tenancy agreement by changing the locks to the rental unit without authorization and that the tenant had unauthorized occupants in her rental unit.

The tenant responded in the letter dated October 27, 2008 requesting that the necessary steps be taken for the landlord to accept two other occupants on the tenancy

agreement. The tenant confirms in this written letter that all previous occupants to be placed on the tenancy agreement were done verbally with no paper work.

The resident manager stated that this letter was not received until after November 1, 2008. Before this letter was received the resident manager states that the tenant and another person accosted him on November 1, 2008 respecting a receipt for rent which stated for "use and occupancy only". The verbal confrontation occurred largely between the resident manager, the tenant and one of the unauthorized occupants of the rental unit. The resident manager stated that due to this confrontation they did not want this occupant as a tenant.

The tenant alleges that the landlord has been seeking to end this tenancy and is now seeking any means to end this tenancy because she won her previous dispute resolution hearings. The tenant submits that the landlord is retaliating against her due to their earlier disputes.

The landlord is relying on the term of the tenancy which states that the tenant is not to have any other occupants other than those noted on the tenancy agreement. The landlord submits that this is a material term of the tenancy and that the tenancy should end due to the tenant's breach.

Analysis:

I grant the tenant's application and I set aside the Notice to End Tenancy for cause. Although I accept that the tenancy agreement, in the addendum, includes a clause stating that the tenant will have no other occupant other than those specified in the tenancy agreement without the consent of the landlord, I accept that the landlord has accepted this breach for most of this tenancy. I do not accept the evidence of the landlord that they were not aware of the tenant's roommates.

A material term of a tenancy is one in which any breach, no matter how minor would result in the end of the contract. For example, non-payment of rent is considered a material term of a tenancy agreement and a breach of this term can result in ending a tenancy. I accept on the balance of probabilities that the landlord's acquiescence of the breach of this clause of the tenancy agreement supports the conclusion that it is not a material term of the tenancy.

Conclusion:

I grant the tenant's application and I set aside the one month Notice to End Tenancy for cause dated November 24, 2008. This tenancy will continue in full force and effect. Having granted the tenant's application, I Order that the tenant may recover the \$50.00 filling fee paid for this application from the landlord. The tenant may deduct \$50.00 from her next month's rent in satisfaction of this sum.

Dated December 19, 2008.

Dispute Resolution Officer