



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 pursuant to the *Residential Tenancy Act* for an order to cancel the notice to end tenancy for cause, pursuant to Section 47. The tenancy started on October 01, 2008 and the rent is \$1600.00 payable in advance on the 30th of each month. Both parties attended the hearing and were given full opportunity to present evidence and make submissions. On the basis of the solemnly affirmed evidence presented at the hearing, a decision has been reached.

Issues

Does the landlord have cause to end tenancy?

Background and Evidence

The landlord testified that the notice to end tenancy for cause, dated November 19, 2008, was served on the tenant on the same day with an effective date of January 31, 2009. The tenant filed an application for dispute resolution on November 24, 2008.

The landlord has cited the following reasons for the notice to end tenancy:

- Tenant has caused extraordinary damage to the unit:
- Tenant has sublet the unit without landlord's written consent.

The landlord stated that the tenant has caused extraordinary damage to the suite and until now she has carried out the repairs at her cost. The current damage is a leaky faucet, a damaged dimmer switch and front door pot light that needs a bulb replacement. The landlord has also submitted into evidence photographs of approximately three cigarette burn marks on the out door porch vinyl flooring, a bathroom sink with faucet, a dimmer switch and general untidiness in the suite.

The tenant stated that the original tenancy agreement was signed for a three bedroom suite located on the upper floor. At the time the tenancy started, the tenant had two room mates and the landlord was aware of the number of occupants in the suite. She chose to name only one tenant on the tenancy agreement as she indicated to the tenant that she had had problems in the past with renting to three individual tenants. Five months into the tenancy, one room mate moved out and the tenant found another room mate to replace her. One year later another room mate moved out and was replaced. As recently as two months prior to the notice to end tenancy, the tenant had another room mate move out and found some one to take her place. The landlord stated that in the two years that the tenant has occupied the suite, he has had five changes of room mates and he has never informed her of any of these changes. The tenant stated that he has always advised her verbally of these changes and based on the tenancy agreement, he understood that the landlord did not want to name the room mates on the agreement.

Analysis

Based on the sworn testimony of both parties, I find that the damage that the landlord has described in her evidence is not extraordinary. Based on the testimony of the tenant I find that the damage to the faucet and dimmer switch is not willful and is a result of regular use. Also, the burn marks on the outdoor vinyl are due to negligence on the tenant's part, but do not constitute grounds for ending the tenancy. Pursuant to Section 32 of *The Residential Tenancy Act*, a landlord must provide and maintain the residential property in a state of decoration and repair and a tenant is not required to make repairs for reasonable wear and tear. Therefore, based on the evidence presented by the landlord, I find that the landlord has not demonstrated that she has sufficient grounds to end the tenancy for extraordinary damage caused by the tenant.

Based on the sworn testimony of the landlord and tenant, I find that the initial tenancy agreement did not name the room mates and the landlord had full knowledge of their presence. The tenant stated he did not have control over the movements of his room mates and verbally informed the landlord each time there was a change.

The landlord implied consent by not taking action against the tenant for having multiple changes of room mates during the two years of tenancy and by choosing to not include the names of the room mates on the tenancy agreement with full knowledge of their presence in the rental unit. Hence I find that the landlord does not have cause to end tenancy based on the fact that the tenant did not have the landlord's written consent to sublet as he did have her implied consent.

Pursuant to Section 47 of the *Residential Tenancy Act*, I uphold the tenant's application to cancel the notice to end tenancy. The notice is set aside and the tenancy will continue. I also find that the tenant is entitled to recover the cost of filing this application and may withhold \$50.00 from the next month's rent.

Conclusion

The notice to end tenancy for cause is set aside, the tenancy will continue and the tenant is entitled to recover the cost of filing this application.

Dated December 11, 2008.