



Dispute Resolution Services

Residential Tenancy Branch
Ministry of Housing and Social Development

Decision

Dispute Codes:

CNC

Introduction

This is an Application for Dispute Resolution by the tenant to cancel the One-Month Notice to End Tenancy for Cause dated February 25, 2009.

Although served with the Application for Dispute Resolution and Notice of Hearing in person, the landlord did not appear.

Issue(s) to be Decided

The tenant is disputing the basis for the notice and the issues to be determined based on the testimony and the evidence is:

- Whether the criteria to support a One-Month Notices to End Tenancy under section 47 of the *Residential Tenancy Act*, (the *Act*), has been established by the landlord or whether the notice should be cancelled on the basis that the evidence does not support the cause shown.

Burden of Proof: The burden of proof is on the landlord to establish that the notice was justified.

Background and Evidence

The tenant testified that the tenancy began in November 2008 at which time a verbal agreement was entered into. The tenant testified that at the time the tenancy began, there was no stated restrictive term in the tenancy agreement

regarding the number of occupants or in regards to the tenant's children. However, when the tenant brought her son to live in the unit, the landlord issued a letter stating that the tenant was in violation of the terms of the tenancy agreement. The tenant testified that she did not agree with this allegation because no restrictive term relating to occupants was included in the verbal contract at the start of the tenancy. The tenant stated that when the landlord then issued a One-Month Notice to End Tenancy for Cause based on "*Tenant has allowed an unreasonable number of occupants in the unit/site*", the tenant chose to dispute the notice and made an application on March 6, 2009.

The tenant advised that in March, prior to the hearing, the landlord presented a written tenancy for the tenant to sign. However, this agreement contained a specific term that identified the occupants allowed in the suite and showed only three individuals, the tenant and two of her three children, on the written agreement. The tenant testified that she was told that this document had to be signed "to prepare for the hearing". The tenant stated that, although she did not agree to the new restrictive term limiting occupants and changing what the parties had originally agreed upon, the tenant nonetheless signed the agreement under the belief that she had no choice. The tenant stated that she signed and dated the agreement March 20, 2009, but the landlord's signature was back-dated to November 2008 which was the start of the tenancy

Analysis

Section 47 of the Act permits a landlord to issue a One-Month Notice to End Tenancy for Cause for various reasons, one of which is "*there are an unreasonable number of occupants in a rental unit*".

If the tenant did not agree to end the tenancy on this basis, the landlord would be required to obtain a decision by a Dispute Resolution Officer ruling that the landlord's allegation of an unreasonable number of occupants was true and that the One-Month Notice for Cause was justified, after which the landlord would need to receive an Order of Possession based on the Notice.

Although section 13 of the Act requires that the landlord prepare a written tenancy agreement reflecting the terms agreed-upon and signed by both parties, the definition of "*tenancy agreement*" includes any agreement written or oral, express or implied, between a landlord and a tenant respecting possession of a rental unit, use of common areas and services and facilities.

I find that the parties did enter into a verbal tenancy agreement at the commencement of the tenancy.

In regards to the written agreement that the tenant testified was presented and that she felt compelled to sign on March 20, 2009, I find that section 14 of the Act provides that a tenancy agreement may only be amended to add, remove or change a term, other than a standard term, if *both* the landlord and tenant agree to the amendment. Under the Act, a new term or altered term can not be imposed unilaterally by one party if the other does not fully agree.

In any case, in this instance, the tenant testified that she did voluntarily reduce the number of occupants and the landlord confirmed in a letter that the landlord is no longer seeking an end to the tenancy based on excessive occupants.

Therefore, I find that the dispute between these two parties has been resolved.

Accordingly, given the above, I find that the One-Month Notice to End Tenancy for Cause is not supported under the Act and that the Notice must be cancelled.

Conclusion

Based on the evidence and testimony, I hereby order that the One-Month Notice to End Tenancy dated February 25, 2009 be permanently cancelled and of no force nor effect.

May 2009

Date of Decision

Dispute Resolution Officer