

Dispute Resolution Services

Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes: AAT, FF

Introduction

I have been delegated authority under section 9.1 of the *Residential Tenancy Act* (the “Act”) to hear this matter and decide the issues.

This is the Tenant’s application to allow access to the rental unit to her guest; and to recover the filing fee from the Landlord for the cost of this application.

I reviewed the evidence on the case file prior to the Hearing. The parties gave affirmed testimony and the Hearing proceeded on its merits.

Background and Evidence

Service

The Tenant testified that she mailed the Notice of Hearing documents to the Landlord, via registered mail, on April 8, 2009. The Tenant provided a receipt and Canada Post tracking number for the documents.

The Tenant provided the following testimony and evidence:

- The Tenant has lived at the rental unit since January 1, 1992. The Tenant has been in a relationship for 5 years, during which time her boyfriend has spent a large amount of time overnight at her residence.
- The Landlord provided the Tenant with a letter, dated March 26, 2009, advising the Tenant that she is in breach of her Tenancy Agreement by allowing her boyfriend to stay overnight more than 14 days in any 12 month period. The letter warns the Tenant to correct the breach, or face possible eviction.
- The Tenant’s boyfriend maintains his own residence and has provided the Landlord with proof that he does so.

- The Tenant stated that she believes the clause in the tenancy agreement that limits the number of days in a year a guest is allowed to stay is oppressive and grossly unfair and that the Landlord is unreasonably restricting access to the rental unit to the Tenant's boyfriend.

The Landlord's agents provided the following testimony and evidence:

- The Landlord is a social housing agency, which selects tenants on the basis of the number of tenants and occupants who will be residing in the rental unit. The Landlord also selects tenants based on their income and assets, and fixes monthly rent in accordance with their income.
- The Landlord is not restricting access to the rental unit to the Tenant's boyfriend. The boyfriend can visit the Tenant, but under the terms of the Tenancy Agreement, he can not live with the Tenant for more than 14 days of the year.
- The Landlord is required to treat all tenants in a like fashion and is not discriminating against the Tenant.
- There are other options available to the Tenant. The boyfriend could move in with the Tenant and have his income included in calculating the monthly rent. The Landlord is not unsympathetic with the Tenant, but is required to enforce the Tenancy Agreement against all tenants.

Analysis

I have carefully considered the testimony and evidence provided by the Tenant and the Landlord's agent.

A copy of the Tenancy Agreement was entered into evidence. Clause 8 of the Tenancy Agreement provides that any change in the number of tenants or occupants in the rental unit, or in their income or assets, is material and of great importance to the Landlord. It is a condition of the Tenancy Agreement that in the event of a change in the number of tenants or occupants or their income or assets, the Landlord has a right to terminate the Tenancy Agreement. By accepting and signing the Tenancy Agreement, a tenant

agrees to notify the Landlord of any change in the number of occupants, and to disclose any change in income or assets of the tenants or occupants.

Clause 10 of the Tenancy Agreement states, "The Tenant shall not permit any person other than an Occupant listed in paragraph 7 without the consent of the Lessor or agreed to in advance in writing by the Lessor as a permitted occupant to reside in or occupy the Premises for a period in excess of 14 days whether or not consecutive in any 12 month period."

If the Tenant's boyfriend does not chose to become a tenant or occupant and disclose his income and assets, so that the Landlord can reassess the Tenant's monthly rent, the Tenant is in breach of the Tenancy Agreement. If the Tenant's boyfriend choses not be an occupant under the Tenancy Agreement, then he can not stay overnight as a guest of the Tenant for more than 14 days in a 12 month period. Otherwise the Tenant is in breach of the Tenancy Agreement. The boyfriend's income and assets have not been disclosed to the Landlord, and the Tenant is not paying any more in rent to the Landlord as a result of the boyfriend's occupancy in the rental unit.

The Tenant testified that her boyfriend spends the majority of time at the rental unit, but maintains his own residence and does not wish to become an occupant or tenant under the Tenancy Agreement. Therefore, the Tenant's boyfriend is a guest, and may not stay with the Tenant for more than 14 days in a 12 month period. The Tenant's boyfriend has not been denied access to the rental unit in order to visit the Tenant.

In order for a term of a Tenancy Agreement to be unconscionable, it must be oppressive or grossly unfair to one of the parties. I do not find clause 8 or clause 12 of the Tenancy agreement to be oppressive or grossly unfair to the Tenant. The Tenant's application is therefore dismissed.

The Tenant has not been successful in her application and is not entitled to recover the cost of filing the application from the Landlord.

Conclusion

The Tenant's application is dismissed without leave to re-apply.

May 7, 2009
