



Dispute Resolution Services

Residential Tenancy Branch
Ministry of Housing and Social Development

Decision

Dispute Codes:

CNC

Introduction

This hearing dealt with an Application for Dispute Resolution by the tenant to cancel a One-Month Notice to End Tenancy for Cause dated May 1, 2009 and effective June 30, 2009.

Both the landlord and the tenant, and witnesses appeared and gave testimony in turn.

Issue(s) to be Decided

The issues to be determined based on the testimony and the evidence are:

- Whether the landlord's issuance of the One-Month Notice to End Tenancy for Cause should be cancelled. This requires a determination of whether the tenant:
 - Failed to comply with a material term and did not correct the situation within a reasonable time after being given reasonable time to do so.

The burden of proof is on the landlord/respondent to justify that the reason for the Notice to End Tenancy meets the criteria specified under section 47 of the Act.

Background and Evidence

The tenancy began on October 29, 2007. The rent for the two-bedroom unit varies according to the tenant's income. Submitted into evidence was a copy of the One-Month Notice to End Tenancy for Cause dated May 1, 2009, a written statement by the

tenant and a copy of a letter from the landlord dated April 30, 2009. The landlord testified that a material term in the tenancy agreement prohibited the tenant from adding an additional occupant. The landlord submitted a copy of "Schedule 'E' of the National Occupancy Standard". The landlord also included an excerpt from the Tenancy Agreement Clause 20 and Clause 9 regarding the restriction on occupants and overnight guests. Also included was the tenant's rental payment ledger showing the tenant's contribution, copies of correspondence, a copy of a unit inspection report and written witness testimony.

The landlord testified that complaints and reports were received from other occupants in the complex and from the caretaker, all alleging that the tenant had added another occupant to the tenancy. The allegation was that the tenant's mother was living with the tenant or at least staying overnight in excess of the 14 days per year that was permitted under the tenancy agreement. The landlord testified that an inspection of the premises revealed that there was an extra mattress in the child's bedroom along with the baby's crib and that personal items, including prescription drugs belonging to the tenant's mother were observed to be in the unit. The landlord felt that this thereby indicated that the individual was not merely visiting, but was actually residing in the unit, contrary to the tenancy agreement and the provisions for subsidized rent.

The tenant testified that she was aware of the restriction on additional occupants and admitted that her mother was a frequent visitor, being that the tenant has medical issues and has often relied on her mother for supportive care. The tenant testified that while her mother was frequently present, she does not reside in the unit and, in fact, resides in her own apartment. The tenant pointed out that the landlord was given a waiver to investigate this fact and to speak to her mother's landlord. The tenant testified that the landlord formally confirmed that the tenant's mother was renting a suite at another location. The tenant testified that it would be the preference of the tenant and her mother to reside together, if permitted. However, this would require a three-bedroom unit. The tenant stated that, until it became possible for the family to be

moved into a larger unit, her mother would continue to visit on a daily basis as necessary to assist with childcare and other needs. The tenant testified that the allegations by the neighbours, the caretaker and the landlord were not based on fact and were the result of certain individuals preoccupied with monitoring the family's activities.

The tenant called her mother as a witness and the witness testified that she spent a considerable amount of time with her daughter and grandchild at the unit arriving early each day and often leaving later in the evening. She stated that she was aware that some people had the impression that she lived in the unit. The witness stated that regardless of what others may believe, she lived elsewhere.

The landlord conceded that it was confirmed that the tenant's mother was paying rent for an apartment at another location. The landlord stated that that the belief that there was another occupant living with the tenant was based on reports that the tenant's mother was observed at the tenant's suite daily and at all hours. The landlord explained that, in situations like this where it appears to other residents that the tenant is being allowed to have an additional occupant, it causes the perception that the rules are not being equally enforced by the landlord.

Analysis

In regards to the whether or not there was be a breach of a material term, I find that allowing an extra occupant to live in the unit would clearly qualify as adequate cause to end the tenancy under section 47 of the Act. However, it is necessary to determine whether or not the landlord has proven that another occupant was permitted by the tenant to reside in the unit.

It is important to note that in a dispute such as this, the two parties and the testimony each puts forth, do not stand on equal ground. The reason that this is true is because one party must carry the added burden of proof. In other words, the respondent, in this case the landlord, has the onus of proving during these proceedings, that ending the

tenancy is justified under the Act. When the evidence consists of conflicting and disputed verbal testimony in the absence of independent evidence, then the party who bears the burden of proof is not likely to prevail.

Based on the testimony and the evidence, I find that the landlord has only succeeded in proving that a particular guest of the tenant spends a substantial amount of time in and around the unit. I find that this fact would not constitute any violation of the Act, provided that this guest does not live in the unit.

I find it necessary to point out that section 30(1)(b) of the Act specifically states that a landlord must not interfere with guests and requires that a landlord refrain from unreasonably restricting access of a person permitted on the residential property by a tenant.

Given the above, I find that the landlord has failed to meet the burden of proof to establish that the tenant has committed a violation pursuant to section 47(1)(h) of the Residential Tenancy Act.

I find that the Landlord has failed to show that the One-Month Notice to End Tenancy for Cause must be upheld. Accordingly, I grant the tenant's application to have the Notice cancelled.

Conclusion

Based on evidence and testimony above, I order that the One-Month Notice to End Tenancy for Cause dated May 1, 2009 is hereby permanently cancelled and of no force or effect.

June 2009

Date of Decision

Dispute Resolution Officer