



Dispute Resolution Services

Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION AND REASONS

Dispute Codes:

CNC

Introduction

Both parties were present at the hearing. They were provided with the opportunity to submit documentary evidence prior to this hearing, all of which has been reviewed, to present affirmed oral evidence, to cross-examine the other party, and to make submissions during the hearing.

Issue(s) to be Decided

The issue to be decided is whether the Notice to End Tenancy for Cause, served pursuant to section 47 of the *Residential Tenancy Act (Act)*, should be set aside.

Background and Evidence

This tenancy commenced on December 1, 2008 for a three-bedroom unit. There are two adults and child living in the rental unit. The landlord testified that a third adult has moved into the rental unit.

The landlord and the tenant agree that a 1 Month Notice to End Tenancy for Cause issued on June 16, 2009 was served on the tenant indicating that the tenant is required to vacate the rental unit on July 31, 2009. The reasons stated for the Notice to End Tenancy were that the tenant has allowed an unreasonable number of occupants in the unit and that the tenant has breached a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.

The landlord presented the following evidence and arguments to support the Notice to End Tenancy for Cause:

- the tenant signed an addendum to the tenancy agreement in which clause 14 states that “any additional persons not signed on this agreement is in violation of this agreement and the parties signed are in breach of this contract unless written permission is received by the Landlord/Caretaker. If the permission is not given, the Landlord/Caretaker can act under the terms of the Residential Tenancy Act.”
- on June 8, 2009 the tenant was given a letter that indicated a third adult had moved into the rental without completing an application or being given written permission by the landlord. This letter directed the third occupant to vacate the

rental unit by June 12, 2009 and that failure to do so would constitute trespassing and that a One Month Notice to End Tenancy would be issued.

- the landlord has noticed the third adult at the rental unit on a frequent basis since May, 2009

The tenant presented the following evidence and arguments in support of the application to cancel the Notice to End Tenancy for Cause:

- that the third adult is the father of her young child and that he only visits the home to see his child and father, who also resides in the unit
- that she is confused as to what would constitute a guest or occupant
- that the third adult lives elsewhere
- the witness, mother of the third adult, testified that her son visits the residence on a frequent basis as his father and son reside there, but that he lives with her at a home approximately 2 miles away

Analysis

After considering all of the written and oral evidence submitted at this hearing, I find that the landlord has provided insufficient evidence to show that the tenant has breached a material term of the tenancy by having an additional occupant reside at the home.

Section 6 of the Act requires that terms of a tenancy agreement clearly communicate the rights and obligations under the agreement. The tenancy agreement includes a clause which restricts the landlord from stopping the tenant from having guests under reasonable circumstances; that restrictions can not be placed on guests and that if the number of occupants is unreasonable the landlord may discuss the issue with the tenant. Clause 14 of the addendum signed by the parties requires the landlord's written permission for any additional occupants and I find that this means permission would be granted if the number of occupants was deemed reasonable. The tenant testified that she is unsure as to what would constitute a guest versus an occupant and that the individual named by the landlord as the third adult tenant is only a frequent visitor.

I find that the presence of the third adult fails to prove that this person is living at the rental unit. The landlord has not provided evidence or testimony which convinces me that this individual is actually living at the rental unit. I have made this decision taking into account the tenant's witness statement and based upon the tenant's confusion in relation to what, if any, limits are placed on the presence of guests. It does not appear that the tenancy agreement details how often guests may visit or stay at the rental unit.

During the hearing the landlord expressed concerns related to the behaviour of the third adult when present at the rental complex; which has no bearing on the application before me. If other problems exist in relation to this tenancy the landlord is at liberty to take action as determined by the Act.

Conclusion

As I have determined that the landlord has not satisfied the legislative requirements to end a tenancy for cause, I am cancelling the One Month Notice to End Tenancy issued on June 16, 2009. This tenancy will continue.

Dated July 21, 2009.

Dispute Resolution Officer

Enforcing rights and obligations of landlords and tenants

6 (1) The rights, obligations and prohibitions established under this Act are enforceable between a landlord and tenant under a tenancy agreement.

(2) A landlord or tenant may make an application for dispute resolution if the landlord and tenant cannot resolve a dispute referred to in section 58 (1) *[determining disputes]*.

(3) A term of a tenancy agreement is not enforceable if

- (a) the term is inconsistent with this Act or the regulations,
- (b) the term is unconscionable, or
- (c) the term is not expressed in a manner that clearly communicates the rights and obligations under it.