

DECISION

Dispute Codes: CNC; FF

Introduction

This is the Tenants' application to cancel a Notice to End Tenancy for Cause and to recover the cost of the filing fee from the Landlord.

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

Issues to be Decided

- Should the One Month Notice to End Tenancy for cause issued September 13, 2009, be cancelled?
- Are the Tenants entitled to recover the cost of the filing fee from the Landlord?

Background and Evidence

The rental unit is a large house containing 4 bedrooms and 3 bathrooms. The tenancy started on February 4, 2009, for a fixed term ending February 28, 2010. A copy of the tenancy agreement was provided in evidence. The Landlord issued a Notice to End Tenancy for Cause, a copy of which was provided in evidence. The reasons listed for ending the tenancy include:

- The tenant or a person permitted on the property by the tenant has put the landlord's property at significant risk; and
- The tenant has assigned or sublet the rental unit without the landlord's written consent.

The Tenants placed an ad on Craigslist on February 25, 2009 under "rooms & shares" advertising a room for rent in the rental unit. A copy of the ad was provided in evidence. The Landlord submits that the Tenants have been renting out, and are currently renting out, rooms in the rental unit without the Landlord's permission and that there are too many people living in the rental unit. The Landlord further submits that the Tenants have put the Landlord's property at risk by renting rooms because the Landlord's insurance company will not insure the property if it is a rooming or boarding house. The

Landlord submitted a copy of a document from an insurance company which states that rooming or boarding houses are not acceptable under their Rented Dwelling Program.

The Tenant testified that at the beginning of the tenancy the Landlord agreed to allow the Tenants to have room mates, but had since changed her mind. The Tenant submitted that she was not subletting or assigning the rental unit, and that the people who were currently living with the Tenants were two home-stay students. There have been a maximum of 5 people living in the 4 bedroom, 3 bathroom house since the tenancy began.

Analysis

Assignment is the act of transferring the tenant's interest in or rights under a lease or tenancy agreement to a third party (the assignee), who becomes the tenant of the original landlord. The assignee takes on the obligations of the original tenant commencing at the time of the assignment.

A sublease is a lease given by a tenant to a third party (the sub-tenant or sub-lessee). The sublease must be for a shorter period than the original lease in order that the original lessee (the tenant) can retain a reversionary interest in the property.

In a rooming house or boarding house, the owner of the residential property resides in the rooming house or boarding house. In this case, the Tenants are not the owners of the rental property. I do not find that the rental property is a rooming house or a boarding house. In any event, the Residential Tenancy Act does not apply to living accommodations in which a tenant shares bathroom or kitchen facilities with the owner of that accommodation.

In this set of circumstances, I do not find that the Tenants assigned their rights under, or interest in, the tenancy agreement. Nor do I find that the Tenants sublet the tenancy to new tenants. I find that the new occupants are simply occupants, with no rights or obligations under the tenancy agreement.

There is no clause in the tenancy agreement prohibiting additional occupants. The tenancy agreement provides that if the number of occupants in the rental unit is unreasonable, the Landlord may discuss the issue with the Tenants and may serve a Notice to End Tenancy. I do not find that there are an unreasonable amount of occupants in the rental unit, and in any event, the Landlord did not list this on the Notice to End Tenancy as a reason to end the tenancy.

Based on the testimony and evidence provided at the Hearing, I grant the Tenants' application to cancel the Notice to End Tenancy issued September 13, 2009. The tenancy remains in full force and effect.

The Tenants have been successful in their application and are entitled to recover the cost of the filing fee from the Landlord. Pursuant to Section 72(2)(a) of the Act, the Tenants may deduct \$50.00 from rent due to the Landlord.

Conclusion

The Tenants' application is granted. The One Month Notice to End Tenancy issued September 13, 2009, is cancelled. The tenancy remains in full force and effect.

Pursuant to Section 72(2)(a) of the Act, the Tenants may deduct \$50.00 from rent due to the Landlord.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated November 10, 2009
