

DECISION

Dispute Codes: CNC

Introduction

This is the Tenant's application to cancel a Notice to End Tenancy for Cause issued March 8, 2010.

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

Issue to be Determined

Should the Notice to End Tenancy for Cause issued March 8, 2010, be cancelled?

Background and Evidence

Facts on which the parties agree:

At the beginning of the tenancy, the Landlord required the Tenant pay the equivalent of 5 month's rent in advance, in the amount of \$4,000.00.

The Landlord did not perform a move-in Condition Inspection Report with the Tenant at the beginning of the Tenancy. The Landlord provided in evidence a copy of a Residential Tenancy Agreement indicating a term of 5 months, however the Tenant did not sign the Tenancy Agreement, and the Landlord has not provided her with a copy of unsigned Agreement, either at the time the tenancy began, or along with his evidence package.

The rental unit is a one bedroom apartment.

The Landlord gave the following testimony:

The Landlord served the Tenant with the Notice to End Tenancy for Cause, by posting the Notice on the door of the rental unit on March 8, 2010.

The Landlord seeks to end the tenancy for the following reasons:

- The Tenant has allowed an unreasonable number of occupants in the unit;
- The Tenant or a person permitted on the property by the Tenant has significantly interfered with or unreasonably disturbed another occupant or the Landlord; and
- The Tenant has engaged in illegal activity that has, or is likely to, adversely effect the quiet enjoyment, security, safety or physical well-being of another occupant or the Landlord.

The Landlord testified that the Tenant has had up to 5 people and a dog staying in the rental unit, making loud noises and disturbing the quiet enjoyment of other tenants. The Landlord testified that the other people appear to be homeless or unemployed and the Landlord and other tenants are concerned that they will bring bedbugs or other vermin into the rental property. The Landlord stated that since the Tenant was served with the Notice to End Tenancy, the loud noises have subsided but not completely stopped.

The Landlord testified that he told the Tenant, on or about February 28, 2010, that other tenants were feeling threatened by the other occupants. The Landlord testified that he provided the Tenant with written warnings on March 3, 2010, and April 8, 2010. The Landlord stated that another tenant provided the Landlord with a written letter of complaint about the Tenant on March 9, 2010. Copies of these three documents were entered in evidence by the Landlord.

The Landlord testified that the Tenant has breached the tenancy agreement by smoking cigarettes in her rental unit, and by having a dog on the premises, which is against the rules. The Landlord testified that the Tenant saw the advertisement for the rental unit before she applied to rent, and it was clear in the advertisement that no dogs were allowed. The Landlord stated that cats were allowed, but not dogs.

The Landlord testified that the Tenant signed a document acknowledging that no smoking or dogs were allowed in the rental property. A copy of this document was entered in evidence.

The Landlord testified that he required 5 month's rent be paid prior to the Tenant moving into the rental unit because he was concerned about her ability to pay the rent.

The Landlord's Witness gave the following testimony:

The Landlord's Witness is the Building Maintenance person. On or about March 26, 2010, the Witness saw the Tenant with a dog in the building. The Witness stated that dogs are not allowed in the building.

The Witness testified that he has heard loud noises coming from the Tenant's suite, but he didn't recall particulars (i.e. the dates he heard the noises, the duration of the noises, or what time of day).

The Tenant gave the following testimony:

The Tenant stated that neither the Landlord nor any other tenant in the rental property have spoken to her about excessive noise coming from the rental unit. She stated that she received the Landlord's written warning on the same day she was provided with the Notice to End Tenancy for Cause.

The Tenant testified that before she entered into the tenancy agreement, the Landlord told her there was no smoking in the common areas at the rental property, but that she was allowed to smoke in her own home. The Tenant testified that the Landlord had seen her smoking in the rental unit in February, 2010, when he came to fix a problem with the plumbing. The Tenant stated that the Landlord did not mention anything at that time about smoking in her rental unit. The Tenant testified that the document provided in evidence by the Landlord, which she signed and which prohibits dogs and smoking on the rental property, was altered to include the handwritten words "NO SMOKING!!!!!!" after she had signed the document. The Tenant stated that she would not have agreed to move in to the rental unit if she wasn't allowed to smoke in her own home.

The Tenant testified that there is confusion about the "no pets" policy. She testified that there was a "no pets" sign posted on the window of the front door to the rental property, but there were cats roaming freely throughout the rental property. The Tenant testified that she does not own a dog and that the dog in question belongs to a friend of hers. The Tenant stated that she would ensure that the dog no longer came into the rental property.

The Tenant testified that none of the people the Landlord referred to as “occupants” live with her, with the exception of her husband. The remaining people are friends of the Tenant and her husband and visit on occasion. The dog belongs to one of the guests, who slept at the rental unit approximately 4 times since the Tenant moved in on December 26, 2009. The Tenant provided documentary evidence from the guest’s landlord, indicating that the guest has lived elsewhere with his dog since February, 2010. The Tenant stated that the Landlord is discriminating against her, her husband and her friends based on class and/or appearance.

The Tenant testified that she didn’t receive the letters entered in evidence dated March 9, 2010 and April 8, 2010, until she received the Landlord’s evidence package.

Analysis

The parties agreed that the Tenancy Agreement provided in evidence by the Landlord was not signed by the Tenant. Therefore, I find that the Tenant is not bound by any of the terms of the written Tenancy Agreement provided in evidence.

Section 1 of the Residential Tenancy Act (the “Act”) defines “tenancy agreement”, as follows:

"tenancy agreement" means an agreement, whether 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, and includes a licence to occupy a rental unit.

Section 13(2)(a) of the Act requires tenancy agreements to include the standard terms as set out in the Residential Tenancy Regulation (the “Regulations”) . Therefore, I find that there is an oral tenancy agreement between the parties and that the standard terms, as provided in the Schedule to the apply. A copy of the standard terms are attached to this Decision.

For the information of the Landlord and the Tenant, Section 14 of the Act states:

14 (1) A tenancy agreement may not be amended to change or remove a standard term.

(2) A tenancy agreement may be amended to add, remove or change a term, other than a standard term, only if both the landlord and tenant agree to the amendment.

(3) The requirement for agreement under subsection (2) does not apply to any of the following:

- (a) a rent increase in accordance with Part 3 of this Act;
- (b) a withdrawal of, or a restriction on, a service or facility in accordance with section 27 *[terminating or restricting services or facilities]*;
- (c) a term in respect of which a landlord or tenant has obtained an order of the director that the agreement of the other is not required.

It is important to note that the Landlord demanded the equivalent of five month's rent from the Tenant at the commencement of the tenancy. This is contrary to the provisions of Sections 5 and 26 of the Act. Section 26 of the Act states that a Tenant must pay rent when it is due, (i.e. not in advance). Section 5 of the Act states that Landlords and Tenants may not contract out of the Act.

Regarding the Landlord's claim that the Tenant has allowed an unreasonable number of occupants in the unit:

I accept the Tenant's testimony that she and her husband are the only people living in, or occupying, the rental unit. I find that the other people the Landlord referred to in his submissions are guests of the Tenant. I do not find that a husband and wife living in a one bedroom suite constitutes an "unreasonable number of occupants".

Paragraph 9 of the standard terms state that a landlord must not stop a tenant from having guests under reasonable circumstances and must not impose restrictions on guests (see paragraph 9 of the Schedule, attached).

Regarding the Landlord's claim that the Tenant or a person permitted on the property by the Tenant has significantly interfered with or unreasonably disturbed another occupant or the Landlord:

I am not satisfied that the Landlord made sufficient efforts to clearly advise the Tenant that her guests' behavior (i.e. making loud noises and disturbing other occupants' quiet

enjoyment) was disturbing others. The Landlord provided the Tenant one written warning less than one week before issuing the Notice to End Tenancy. The Landlord testified that the other two letters were written subsequent to the date the Notice was issued and served. The Tenant denied receiving them until she was provided them in evidence for the Hearing.

Regarding the Landlord's claim that the Tenant has engaged in illegal activity that has, or is likely to, adversely effect the quiet enjoyment, security, safety or physical well-being of another occupant or the Landlord:

There was no evidence that the Tenant had engaged in illegal activity.

For the reasons stated above, I find that the Landlord has not proven cause to end the tenancy for the reasons contained in the Notice to End Tenancy for Cause issued March 8, 2010. Therefore, the Notice to End Tenancy for Cause issued March 8, 2010, is cancelled. The tenancy remains in full force and effect until it is ended in accordance with the provisions of the Act.

Conclusion

The Tenant's application is granted. The Notice to End Tenancy for Cause issued March 8, 2010 is cancelled. The tenancy remains in full force and effect.

I find that there is an oral tenancy agreement between the parties and that the standard terms provided in the Schedule to the Residential Tenancy Regulation apply.

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.

April 28, 2010

Date of Decision
