



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes CNC

Introduction

This matter dealt with an application by the Tenant to cancel a One Month Notice to End Tenancy for Cause.

Issues(s) to be Decided

1. Does the Landlord have grounds to end the tenancy?

Background and Evidence

This tenancy started on June 1, 2006. The rental unit is a suite built onto the side of a shop on the rental property. The Landlord(s) reside in a separate house also located on the rental property. On August 25, 2010, the Landlord served the Tenant (who is their daughter) with a One Month Notice to End Tenancy for Cause dated "25 August 01." The Landlord said this was an inadvertent typographical error and should have said "25 August '10." The grounds stated on the Notice were as follows:

- The Tenant has allowed an unreasonable number of occupants in the unit; and
- The Tenant or a person permitted on the property by the Tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord.

The Landlord(s) said that they built a suite on the side of the shop on their property to help out their daughter who was recently separated from her spouse. The Landlord(s) said it was their intention to help their daughter out but only until she could "get back on her feet again." However, the Landlords said they advised their daughter at the beginning of the tenancy that because there would be an added strain on the well and the septic system, she could not have any additional occupants (other than her daughter) live with her. The Landlords said their daughter also agreed that it would be a non-smoking suite and that she would quit smoking but she continues to smoke.

The Landlords claim that over the tenancy, and in particular, over the past two years, their privacy has been "invaded" by guests of the Tenant constantly coming and going from the rental unit. The Landlords said that the Tenant also had a boyfriend living with

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her for approximately 3 months in the summer which put a strain on the septic system. The Landlords also said that the Tenant allowed an adult, step-son to reside with her for approximately 2 months in addition to allowing friends to reside there short-term while “in between residences.” The Landlords said when they approached the Tenant about her guests, or about her intentions on moving out she screamed at them, accused them of abuse and said she would not move or pay full rent because she had a disability.

The Landlords said they have tried to accommodate the Tenant by allowing her to reduce her rent from time-to-time (for example) but they have seen no evidence of her alleged disability and believe she expects them to support her indefinitely which was not their intention.

The Tenant claimed that the tenancy was intended to be “forever” and that the rental unit was specially equipped to accommodate her disability. The Tenant admitted that she has paid reduced rent but argued that the Landlords allowed her to do so and that she always paid it on time. The Tenant claimed that her boyfriend only stayed 3-4 days at a time per week and that her step-son only stayed on weekends. The Tenant denied that there was a steady stream of people coming and going from the rental unit and claimed that only a few, close friends visit her once or twice a week to help her with house work or to drive her around. The Tenant said only she and her daughter have ever resided in the rental unit.

The Tenant claimed that she has a good relationship with her mother but that her father has been unreasonable about her and her daughter having guests, makes them feel unwelcome and demands that they not park on the rental property. The Tenant said she is respectful to her parents at all times and denied screaming at them. The Tenant said any arguments or issues she has had with her parents have been over “family matters” and never over tenancy matters. The Tenant’s witness claimed that it was the Landlord who yelled at the Tenant. The Tenant’s witness also claimed that the Tenant’s guests are always quiet and never disturb the Landlords whose house is far apart from the rental unit.

Analysis

The copy of the One Month Notice to End Tenancy for Cause is dated “25 August 01” and the effective date is shown as, “30 September 01.” The Landlord claimed that the year was incorrectly written and should have been “10.” In the circumstances, I find that the Tenant would have known that the year should have stated “10” or “2010” (given that the tenancy didn’t start until 2006) and as a result, the Notice is amended pursuant to s. 53 and 68 of the Act to correct the year.

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The copy of the Parties' tenancy agreement *does not* contain a term restricting the number of occupants that may reside in the rental unit. Consequently, even if the Tenant had other people residing with her as the Landlord alleged, I find that there is nothing in the tenancy agreement that prohibits her from doing so. However, one must also consider what number of occupants can reasonably reside in a suite, having regard to the size of the suite and the ability of the water and septic system to accommodate the total number of persons residing on the rental property (including the Landlords).

Although the Landlords argued that the Tenant's guests put a strain on the well and the septic system, I find that there is no corroborating evidence to support that allegation. Consequently, I find that there is insufficient evidence to conclude that the Tenant has had an unreasonable number of occupants in the rental unit and therefore the Landlord cannot rely on that ground of the Notice.

Section 30(1)(b) of the Act says that a landlord must not unreasonably restrict access to a residential property by a person permitted on the residential property by a tenant. This means that a Tenant is entitled to have a reasonable number of guests on the rental property provided that those guests do not unreasonably disturb other occupants of the rental property. Section 28 of the Act also says that a Tenant has a right to quiet enjoyment which includes but is not limited to,

- reasonably privacy;
- freedom from unreasonable disturbance;
- exclusive possession of the rental unit; and
- the use of common areas for reasonable and lawful purposes, free from significant interference."

This means that the Tenant is not only entitled to have guests in the rental unit and on the common areas of the rental property but that the Landlord may not unreasonably interfere with that right. The Landlords argued that they felt their privacy was being invaded however, by entering into a tenancy agreement with the Tenant the Landlords assumed these responsibilities under the Act and thereby gave up some of the privacy that they enjoyed as sole occupants of the property prior to the tenancy.

The tenancy agreement states that parking for 1 vehicle is included in the rent. Consequently, the Tenant is entitled to park one vehicle on the rental property whether it belongs to her or to one of her guests. Therefore, I also find that the Landlord is only entitled to insist that any additional vehicles belonging to the Tenant's guests be parked off of the rental property.

The Landlords did not complain about the Tenant or her guests making noise or causing any other disturbances. The Landlord's only complaint was that he felt his privacy was invaded by the Tenant having guests and that she was disrespectful in the way she

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treated him and his spouse. However, this evidence was contradicted by the Tenant and I find that this dispute is more a case of disappointed expectations. The Landlords want to end a tenancy they say they thought would be short-term and now they have serious concerns that the Tenant is becoming financially dependent on them (rather than financially self-sufficient) and that she does not want to move out for that reason. The Landlords say want their property back for their own use. The Tenant claimed that she thought she would be able to stay on the rental property “forever.” The Tenant says she has a disability (which the Landlords dispute) that has compromised her ability to work and that she relies on others for assistance with driving and housework.

In any event, given the conflicting evidence of the Parties as well as the findings in the preceding paragraph, I find that there is insufficient evidence to conclude that the Tenant or her guests have significantly interfered with or unreasonably disturbed the Landlord(s). Consequently, the Landlords cannot rely on this ground of the Notice and as a result, the One Month Notice to End Tenancy for Cause dated August 25, 2010 is cancelled and the tenancy will continue.

Conclusion

The Tenant's application is granted. The One Month Notice to End Tenancy for Cause dated August 25, 2010 is cancelled and the tenancy will continue. 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: September 16, 2010.

Dispute Resolution Officer