

## **Decision**

**Dispute Codes:** CNC, OLC, FF

### **Introduction**

This hearing dealt with an application by the tenant for cancellation of a notice to end tenancy, an order instructing the landlord to comply with the Act, Regulation or tenancy agreement, and recovery of the filing fee. Both parties participated in the hearing and gave affirmed testimony.

### **Issues to be decided**

- Whether the tenant is entitled to any or all of the above under the Act, regulation or tenancy agreement

### **Background and Evidence**

Pursuant to a written tenancy agreement, the month-to-month tenancy began on August 1, 2010. Monthly rent is \$900.00 and includes utilities such as water, electricity, heat, and cablevision. A security deposit of \$450.00 was collected at the start of tenancy.

Arising from the landlord's claim that, in addition to the tenant, the tenant's mother is a resident in the unit, the landlord issued a 1 month notice to end tenancy for cause dated October 31, 2010. The notice was served in person on the tenant on that same date. A copy of the notice was submitted into evidence. The reason shown on the notice for its issuance is as follows:

Tenant has allowed an unreasonable number of occupants in the unit.

Subsequently, on November 3, 2010, the tenant filed an application to, among other things, dispute the notice. Principally, the tenant disputes that two is an "unreasonable number of occupants" in the subject unit.

During the hearing the parties exchanged views on some of the circumstances surrounding the dispute and undertook to achieve a resolution.

### **Analysis**

The full text of the Act, Regulation, Residential Tenancy Policy Guidelines, Fact Sheets, forms and more can be accessed via the website: [www.rto.gov.bc.ca/](http://www.rto.gov.bc.ca/) The attention of the parties is drawn specifically to section 47 of the Act, **Landlord's notice: cause**.

Further, section 14 speaks to **Changes to tenancy agreement**, in part as follows:

14(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.

Section 63 of the Act provides that the parties may attempt to settle their dispute during a hearing. Pursuant to this provision, discussion between the parties during the hearing led to a resolution. Specifically, it was agreed as follows:

- that the subject notice to end tenancy is set aside, such that the tenancy presently carries on uninterrupted;
- that the parties will enter direct discussions around the prospect of amending the existing tenancy agreement; such amendments could include naming two persons as tenants, and could include an upward adjustment in monthly rent in view of increased wear and tear on the unit, and increased use of utilities ;
- that failure to reach an agreement, as above, may lead to the landlord's issuance of a 1 month notice to end tenancy on grounds 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.

For further reference, Residential Tenancy Policy Guideline # 8 addresses "Unconscionable and Material Terms," and provides in part as follows:

## **Material Terms**

To end a tenancy agreement for breach of a material term a landlord must establish that the tenant breached a material term and that the tenant did not rectify the breach within a reasonable time after notice to do so by the landlord. To determine the materiality of a term, an arbitrator will focus upon the importance of the term in the overall scheme of the tenancy agreement, as opposed to the consequences of the breach. It falls to the person relying on the term, in this case the landlord, to present evidence and argument supporting the proposition that the term was a material term. A material term is a term that the parties both agree is so important that the most trivial breach of that term gives the other party the right to end the agreement. The question of whether or not a term is material and goes to the root of the contract must be determined in every case in respect of the facts and circumstances surrounding the creation of the tenancy agreement in question. It is entirely possible that the same term may be material in one agreement and not material in another. Simply because the parties have put in the agreement that one or more terms are material is not decisive. The arbitrator will look at the true intention of the parties in determining whether or not the clause is material.

## **Conclusion**

Following from all of the above, the notice to end tenancy is hereby set aside, with the result that the tenancy continues in full force and effect.

As the parties took an opportunity during the hearing to presently resolve the dispute, I order that the tenant may withhold from the next regular payment of monthly rent, one half the filing fee in the amount of **\$25.00** ( $\$50.00 \div 2$ ).

DATE: November 25, 2010

---

Dispute Resolution Officer