



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

DECISION

Dispute Codes CNC, FF

Introduction

This matter dealt with an Application by the Tenant to cancel a One Month Notice to End Tenancy for Cause dated December 31, 2010 and to recover the filing fee for this proceeding.

Issue(s) to be Decided

1. Do the Landlords have grounds to end the tenancy?

Background and Evidence

This tenancy started on August 30, 2006. There is no written tenancy agreement. The Landlords reside on an upper level of the rental property. Since the beginning of the tenancy, the Tenant has shared the 2 bedroom basement suite with one other tenant from time to time. The Landlords claim that each tenant of the rental unit is individually responsible for their portion of the rent, however the Tenant claimed that when there is no other tenant, he is responsible for the full amount of the rent.

On December 31, 2010, the Landlords served the Tenant with a One Month Notice to End Tenancy for Cause dated December 31, 2010. The grounds listed 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 Landlords claimed that they had an understanding with the Tenant that “they were only renting to 2 people.” The Landlords said they made this clear to the Tenant and his co-Tenant (or the other occupant at that time) during the summer of 2007 when his co-tenant had her 2 grandchildren stay for a couple of weeks. The Landlords said that the Tenant permitted his girlfriend to reside in the rental unit from approximately mid-October 2010 until January 5, 2011. The Landlords said they spoke to the Tenant about this a number of times and in particular asked him when she would be leaving. The Landlords said they finally gave the Tenant a written Notice on December 4, 2010 which stated,

“Notice is hereby given that third person (H) must vacate suite at above address no later than December 7, 2010 before 12:00 p.m. Reason: Unreasonable number of occupants in the suite”

The Tenant said the other person staying with him was his girlfriend but that she had her own residence. The Tenant admitted that his girlfriend stayed with him for periods of approximately 4 days at a time (and on one occasion for a week). The Tenant also said there was no agreement with the Landlords that he could not have guests overnight. The Tenant claimed that at least one other tenant of the rental unit had had his girlfriend stay at the rental unit for extended periods of time but the Landlords never complained about that. Consequently, the Tenant argued that one of the Landlords did not like his girlfriend staying as a guest because of her ethnicity. The Tenant also claimed that he was no longer dating his girlfriend and therefore he believed this was a “moot issue.”

The Landlords also claimed that on approximately 6 or 7 occasions in October and November of 2010, the Tenant’s girlfriend showed up at the rental property (often in the early hours of the morning), intoxicated and would either ring their door bell or bang on the windows of the rental unit so that the Tenant would let her in. The Landlords provided a list of dates when they claimed these incidences occurred. The Landlords also claimed that the Tenant’s girlfriend disturbed them by leaving doors unlocked and slamming doors.

The Tenant admitted that his girlfriend may have been noisy once in a while and may have accidentally rung the Landlords’ door bell but he denied that she banged on the windows. The Tenant claimed that he had an arrangement where his girlfriend would call him before coming over so he could unlock the outer door for her. The Tenant said the Landlords never complained to him about his girlfriend making noise until after they served him with the One Month Notice.

Analysis

I find that there is insufficient evidence to conclude that it was a term of the Parties’ tenancy agreement that there could be no more than 3 people residing in the rental unit. In particular, there is no written tenancy agreement and the Landlords admitted that the first time this issue came up was almost a year after the tenancy started when they advised the Tenant they would not permit more than 2 occupants. However, in the absence of some evidence that the Tenant agreed to the Landlords’ demand, I find that there was no enforceable agreement. The Landlords provided no other reason to suggest why more than 2 people residing in the rental unit constituted an unreasonable number and as a result, I find that they cannot rely on this ground of the Notice.

The Tenant claimed that the Landlords did not complain about his girlfriend causing noise disturbances until after they served him with the One Month Notice. The

Landlords also admitted that they did not warn the Tenant that his failure to do something about his girlfriend's alleged noise disturbances could result in his tenancy ending. It is a fundamental principle of administrative fairness and natural justice that a person accused of violating a rule or law, be afforded some warning that their conduct is not acceptable, be made aware that failure to cease the conduct will place their tenancy in jeopardy and also be given an opportunity to answer to the allegations. Based on the testimony of both parties I find that this did not occur and for that reason, I find that the Landlords cannot rely on this ground of the Notice.

In summary, I find that there is insufficient evidence to support the grounds set out on the One Month Notice to End Tenancy for Cause dated December 31, 2010 and it is cancelled.

Conclusion

The Tenant's application is granted. The One Month Notice to End Tenancy for Cause dated December 31, 2010 is cancelled and the tenancy will continue. As the Tenant has been successful, he is entitled to recover from the Landlords the \$50.00 filing fee for this proceeding. I order pursuant to s. 72 of the Act that the Tenant may deduct this amount from his next rent payment when it is due and payable to the Landlords.

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: January 24, 2011.

Residential Tenancy Branch