



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

DECISION

Dispute Codes CNC

Introduction

This hearing was convened in response to an application by the Tenant to cancel a One Month Notice to End Tenancy for Cause (the Notice) on the following ground:

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

The Tenant was personally served with the Notice on February 17, 2011 and in response, filed an Application for Dispute Resolution on February 18, 2011 and served this with the Notice of Hearing by registered mail on February 21.

Witnesses for the Landlord appeared and provided information. Both the Tenant and the Landlord participated in the hearing and were given full opportunity to be heard, to question the witnesses and to question each other.

Preliminary Matter

Evidence, in the form of a package of materials, was filed by the Landlord on February 25, 2011 but not served to the Tenant prior to the Hearing. Upon review of this evidence and considering the Rules of Procedure, principles of natural justice and prejudice to the Tenant, this evidence and witness evidence related to that package will not be considered for the purposes of this decision.

Issue(s) to be Decided

Is there is sufficient cause to end the tenancy?

Background and Evidence

The Landlord stated she was informed by others that people have been staying at the Tenant's residence. She however did not know however when or for how long these persons were at the residence as she lives elsewhere. The Landlord did acknowledge that she was aware that the Tenant was suffering medical problems.

Witness #1 for the Landlord, the repair man, stated that he witnessed a Ford truck, believed to belong to the Tenant's son, parked at the residence on a daily basis between November 16 and mid January. He was not aware of any other persons staying at the Tenant's residence with such consistency, either during that period of time or currently.

Evidence on file indicates that the Tenant has been suffering from significant medical problems since September 2010 requiring increased family and community assistance with "mobility and multiple activities of daily living." This assistance is further noted to be most likely required until at least April 2011 and would include overnight stays depending on her condition at the time.

The Tenant's agent states that the Ford truck parked at the residence was the vehicle being used, on a temporary basis, to transport the Tenant. The Tenant's agent further stated that, given the nature of the Tenant's limited mobility and medical problems, the truck was a necessary form of transportation for the Tenant.

Analysis

For this type of application, the onus is on the Landlord to prove the Notice was issued on sufficient grounds in order for the notice to be valid. Although the Landlord stated that persons were staying at the Tenant's residence, evidence of **occupation** by a person or persons came only in the form of a truck that was consistently present for a period of time. I accept the Tenant's evidence that this truck was there for the Tenant's purpose and not because the Tenant's son was an occupant. Given the evidence of

medical problems and resulting assistance needs of the Tenant, it cannot be said that any other persons staying at the residence were **occupants**. Given these facts, I cannot find on a balance of probabilities that the Landlord has provided sufficient evidence of cause on the grounds set out above.

Conclusion

Given my findings, **I order** the Notice **cancelled** and to be of no effect.

As the outcome of this hearing favors the Tenant, I find that the Tenant is entitled to recovery of the **\$50** filing fee for this application. **I order** that the Tenant may withhold this amount from the rent payable following this decision.

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: March 04, 2011.

Residential Tenancy Branch