

DECISION

Dispute Codes CNC, OLC

Introduction

This hearing was convened in response to an application by the Tenant pursuant to the *Residential Tenancy Act* (the "Act") for an Order cancelling a *One Month Notice to End Tenancy For Cause (the Notice)*, dated May 1, 2011, with an automatically adjusted effective date of June 31, 2011 [Section 53].

The reasons stated on the Notice are: Tenant has allowed an unreasonable number of occupants in the unit, and, Tenant has assigned or sublet the rental unit without the Landlord's consent

The Landlord and Tenant were each given full opportunity to be heard, to present evidence and to make submissions. During the course of the Hearing, the Tenant stated that they are not seeking an Order that the Landlord comply with the Act.

Issue(s) to be Decided

Is the notice to end tenancy valid?

Background and Evidence

The tenancy of a two bedroom unit began on September 1, 2000 with one Tenant. The Landlord states that on June 15, 2011 the second Tenant was added to the lease and that this second Tenant also has a child residing at the unit. The Landlord states that at the beginning of March 2011, a third adult person was noted to be staying at the unit and that this person is still at the unit. The Landlord states that this person is either an occupant with the other Tenants or is subletting the unit. The Landlord states that this third person has keys to the unit, is parking at the unit, has been seen at the unit with the other Tenants and has entered the unit when the other Tenants are not present. The Landlord states that the addition of another occupant in the unit is unreasonable given the two bedrooms. The Landlord further states that this third person is otherwise a sublet and no consent has been provided to the Tenants for such a sublet.

The Tenant states that this third person is a cousin visiting from Ontario, arrived at the end of March 2011 and will be returning to Ontario on June 6, 2011. The Tenant states that his cousin has a residence in Ontario. The witness for the Tenants, the mother of one of the Tenants, states that this cousin came to visit family members, including grandparents and an uncle that he has never met before. The witness further states that as the other members of the family did not have room at their residences, the cousin was asked to stay with the Tenants for the duration of the visit. The witness further stated that the cousin was asked to stay as a guest in order to save him hotel expenses.

Analysis

In this type of application, the burden of proof rests with the Landlord to provide compelling evidence that the Notice was validly issued for the stated reasons. On a balance of probabilities, I find the Landlord has not met the test for issuing a valid Notice. I prefer the Tenant's and witness evidence over the evidence of the Landlord and accept that the third person is a guest and not an occupant. Given this finding, I also find that this third person has not sublet the unit. Accordingly, **I order** the Notice dated May 1, 2011 is **cancelled** and is of no effect.

Conclusion

The 10 day Notice to End Tenancy for Cause is cancelled and of no effect.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the Act.

Dated: June 03, 2011.

Residential Tenancy Branch