

DECISION

Dispute Codes: CNC and FF

Introduction

By application of August 3, 2011, the tenant seeks to have set aside a Notice to End Tenancy for cause, assignment or sublet of the rental unit without written consent, dated July 22, 2011 and setting an end of tenancy date of August 31, 2011.

Issues to be Decided

This matter requires a decision on whether the Notice to End Tenancy should be upheld or set aside.

Background and Evidence

This tenancy began on August 31, 2010 under a two-year fixed term rental agreement set to end on August 31, 2012. Rent is \$1,750 per month and the landlord holds a security deposit of \$875. The rental unit is in an apartment building governed under the *Strata Property Act*.

The applicant tenant is the sole tenant signatory to the rental agreement but the agreements lists two other tenants. The tenant stated that the landlord had wished to have one head tenant who would represent the tenants.

During the hearing, the landlord's agent gave evidence that her company had been engaged by the landlord to manage the subject tenancy. She stated that the Notice to End Tenancy had been issued at the direction of the landlord after the tenant had on three separate occasions breached the rental agreement by failing to obtain the landlord's consent when sub tenants turned over.

New tenants moved in on or about October 15, 2010, January 10, 2011 and March 13, 2011.

The turnover of tenants had resulted in some incidents that ran afoul of strata bylaws. For example, one visitor had a prohibited dog that left a mess in a hallway, one tenant

failed to book the move-in as required, another came into conflict with the applicant tenant resulting in police attendance. At least one matter resulted in a fine imposed by the strata council.

The tenant stated that she had verbal consent for the change of tenants and that it had been the landlord's expressed wish to her that she manage the sub tenancies.

The tenant stated that during at least part of the material times, she had been preoccupied with the passing of her mother.

She stated that she had previously needed sub tenants to assist with the rent but that there are no sub tenants at present and she anticipates no sub tenants for the duration of the tenancy as she no longer needs assistance with the rent and has no desire to share the rental unit.

Analysis

As noted by the landlord's agent, the rental agreement clearly states that the only tenants authorized to occupy the rental unit are those named on the rental agreement and that any breach of that term can be grounds to end the tenancy.

In addition, section 34(1) of the *Act* provides that, "Unless the landlord consents in writing, a tenant must not assign a tenancy agreement or sublet a rental unit."

In order to definitively challenge the Notice to End Tenancy, the tenant would need to have provided copies of written approval from the landlord authorizing the turnover of tenants in each instance and she has not been able to do so.

However, I note also that the materiality of a term of a rental agreement can diminish if it is not upheld consistently. The tenant claims that the Notice to End Tenancy came as a surprise to her as she had received no written warning from the landlord following the incidents of October 2010, January 2011 and March 2011. This raises a reasonable doubt as to whether the tenant had cause to believe she had the landlord's tacit approval to manage the turnover of sub tenants.

I will, with some very serious reservations, grant the tenant the benefit of that small doubt, taking into account her promise that there are not now will never again be sub

tenants in the rental unit without the prior written consent of the landlord or her authorized agent.

I would note also that the Notice to End Tenancy of July 22, 2011 and the very comprehensive submissions by the landlord's agent constitute clear and unambiguous written warning to the tenant and may be given as evidence of such if a further hearing on the matter should be necessary.

Conclusion

The Notice to End Tenancy of July 22, 2011 is set aside and the tenancy continues.

September 1, 2011