



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC

Introduction

This hearing was convened in response to an application filed by the tenant seeking to cancel a Notice to End Tenancy given for cause.

Both parties appeared at the hearing and gave evidence under oath.

Issue(s) to be Decided

Has the landlord met the burden of proving cause to end this tenancy.

Background and Evidence

The tenant has resided in the rental unit for approximately 2.5 years. The landlord says the rental unit is a bachelor suite. The landlord stipulates that if guests are allowed they are only allowed to stay for 14 days. The landlord states that the tenant had a guest who he said was his cousin staying in the rental unit. The landlord produced an illegible security camera photograph purported to be of the tenant's guest in the common area on October 17, 2011. The landlord also produced a note from the tenant dated October 17, 2011 seeking permission for his guest to stay longer. The landlord wrote to the tenant on October 17, 2011 advising him that his cousin must vacate. The landlord says the cousin vacated a day or two after the letter was sent. The landlord states that this incident provides grounds for eviction under the ground that the tenant had too many occupants in the bachelor suite and that the tenant breached a material term of the tenancy by having a guest who overstayed the allowable amount of time.

With respect to the ground of significant interference and that the tenant has engaged in an illegal activity that has adversely affected the quiet enjoyment, security, safety or physical well-being of another occupant or the landlord, the landlord says the tenant assaulted his guest in the rental building. The landlord produced a witness MP who testified that the tenant and his guest were seen fighting outside the building and the police were called. MP testified that he spoke with the police officer who attended and the officer advised that he would not be pressing charges because the version of events

supplied by either the tenant or the landlord could not be relied upon. MP says the officer also advised him that tenant and his guest were fighting because the tenant was charging his guest \$20 a night to stay in the rental unit and was demanding the money up front. The landlord says that this is evidence of an illegal activity (assault) and evidence that the tenant was subletting his unit without the landlord's permission. The landlord says also that the man staying with the tenant was not in fact his cousin.

The landlords submitted that the presence of the police at the rental building is disturbing to other residents. The landlord says that due to the nature of the tenants (some being on addiction programs) that the landlord owes a higher duty of care to its tenants.

The landlord supplied an Incident Report filed by MP dated October 16, 2011. MP complained that the tenant took snacks that were not his to take. The snacks are provided for those tenants who were on the methadone program; a program the tenant is not on. When MP told the tenant not to take the snacks the tenant told him to go "F" himself. MP says the extra snacks were for the tenant's guest. MP also says that the tenant threatens him and mocks him.

The tenant submits that the landlord has not caused to end the tenancy and that the police had attended the building for other reasons.

Analysis

The landlord is seeking to end this tenancy. The landlord therefore bears the burden of proving it has cause to end this tenancy. Based on the landlord's evidence, which I accept, I find that the tenant had a guest that overstayed the 14 day time limit within which tenants are allowed to have overnight guests. When the landlord wrote to the tenant to advise him that the guest had to leave, the guest left within a day or two of the landlord's letter. The landlord believes this incident to be a breach of a material term. 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.** I do not find the guest policy to be so important a term to make it a material term and, even if it was a material term, I find that the tenant complied in a timely fashion with the landlord's request to have his guest leave.

With respect to the alleged assault it is not clear to me whether the witness MP saw the assault or not. While it seems clear police attended, it is unclear whether the incident

took place inside the building or out on the street. In any event even if this event occurred as alleged, I do not find one such incident significant enough to end a tenancy.

Nor do I find it sufficiently significant to end this tenancy that the tenant may have pilfered snacks left in the common room for other tenants.

Overall I do not find that the landlord has met the burden of proving cause to end this tenancy.

The tenant's application is allowed. The Notice to End Tenancy is set aside with the effect that this tenancy shall continue as though no notice had been served.

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: November 23, 2011.

Residential Tenancy Branch