



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes DRI CNR FF

Introduction

This hearing dealt with an application by the tenant to dispute an additional rent increase and to cancel a notice to end tenancy for unpaid rent. Both the tenant and the landlord participated in the teleconference hearing.

I have reviewed all evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this decision.

Issue(s) to be Decided

Has the landlord increased the rent in accordance with the Act, regulation or tenancy agreement?

Is the notice to end tenancy valid?

Background and Evidence

The tenancy began on July 1, 2011, with monthly rent in the amount of \$625.

The tenancy agreement states, in part, as follows: "Subject to clause 13, Additional Occupants, the tenant agrees that for each additional occupant... the rent will increase by \$100.00 per month." Clause 13 of the agreement sets out the procedure regarding additional occupants:

"A tenant anticipating an additional person to occupy the rental unit must promptly apply in writing for permission from the landlord for such person to become an approved occupant. Failure to apply for and obtain the necessary approval of the landlord in writing is a breach of a material term of this Agreement, giving the landlord the right to end the tenancy after proper notice."

On January 10, 2012, the landlord served the tenant a caution notice, in which he indicated that the tenant had violated clause 13 of the tenancy agreement by having a

person stay in the rental unit more than 14 days, and the tenant was therefore subject to a \$100.00 penalty, which must be paid within 10 days.

On January 25, 2012, the landlord served the tenant a notice to end tenancy for unpaid rent in the amount of \$100.

Landlord's Evidence

In December 2011, the landlord talked to the tenant about her boyfriend, whose car was parked in the rental building's parking lot many nights, and had frost on the windows in the morning. The landlord then gave the tenant a caution notice, in which he informed the tenant that she was subject to a \$100.00 penalty. The tenant did not pay the penalty, so the landlord served the tenant the notice to end tenancy for failure to pay the penalty.

Tenant's Response

The tenant spoke to the landlord in the summertime, not December, about her friend. The tenant's friend often visited the tenant in the evening and would also come early in the morning to pick the tenant up, but he did not stay overnight, and he has his own place to live.

The tenant always pays her full rent of \$625 on time. Clause 13 of the tenancy agreement doesn't say anything about paying a \$100.00 penalty.

Analysis

The landlord acted improperly when he sought to penalize the tenant for an additional occupant. Under the tenancy agreement, if the tenant seeks to have an additional occupant she may request the landlord's written permission. If the landlord grants permission for the additional occupant, the tenant must pay an additional \$100 in rent, not as a penalty, for the permitted additional occupant. If the tenant does not seek permission for an additional occupant and the landlord believes the tenant has breached the agreement by allowing an additional unauthorized occupant, the remedy available to the landlord is to serve the tenant a notice to end tenancy for cause.

The landlord has not increased the rent in accordance with the Act, regulation or tenancy agreement. The monthly rent therefore remains at the amount of \$625, until such time as the landlord seeks to increase the rent in accordance with the Act, regulation or tenancy agreement.

The notice to end tenancy for unpaid rent is not valid, as the landlord sought a penalty not permitted under the tenancy agreement, and a notice to end tenancy for unpaid rent is only valid if the amount claimed is for unpaid rent.

Conclusion

The notice to end tenancy is cancelled, with the effect that the tenancy continues.

As the tenant's application was successful, she is entitled to recovery of her filing fee, in the amount of \$50. The tenant may withhold this amount from her next month's rent.

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: February 17, 2012.

Residential Tenancy Branch