



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, MNDC, OLC, RP, PSF, RR and FF

Introduction

This hearing was convened on the tenant's application of March 1, 2012, amended on March 8, 2012, to have set aside a Notice to End Tenancy for cause served on March 7, 2012 and setting an end of tenancy date of April 30, 2012. The tenant had originally applied to have a Notice to End Tenancy for unpaid rent set aside, but that notice was extinguished by payment within five days.

The tenant also sought orders for a monetary award for damage or loss, landlord compliance with the legislation, repairs, provision of services or facilities, and recovery of the filing fee for this proceeding.

While both the landlord and tenant had submitted substantial evidence addressing other causes to end the tenancy, the landlord's advocate elected to proceed only on the cause that the tenant has allowed an unreasonable number of occupants in the unit.

At the commencement of the hearing, I advised the parties of Rule 2.3 under the Rules of Procedure which provide that:

"If, in the course of the dispute resolution proceeding, the Dispute Resolution Officer determines that it is appropriate to do so, the Dispute Resolution Officer may dismiss unrelated disputes contained in a single application with or without leave to reapply."

Issue(s) to be Decided

This matter requires a decision on whether the Notice to End Tenancy should be set aside or upheld, taking into account my finding on that question, whether the additional claims made by the tenant are sufficiently related to the primary issue to be heard at the same time..

Background and Evidence

Matters have been somewhat affected by the fact that the parties have been friends for some time and consequently did not have a written rental agreement. The tenant believes the tenancy began in the summer of 2007, but the landlord believes that it began in the summer of 2008. The tenant stated that he paid a security deposit of \$350 at the beginning of the tenancy and the parties concur that there was a \$100 surcharge added to the rent in January 2012 to compensate the landlord for the additional utility costs imposed by the addition of two persons to the rental unit, a need exacerbated by the landlord's diminished income due to illness.

During the hearing, the landlord's advocate gave evidence that the Notice to End Tenancy had been served after the landlord had, for several months, asked the tenant verbally and in writing to find new accommodation because the tenant's sister and nephew had moved in to the rental unit without the landlord's consent.

The landlord's advocate stated that the one-bedroom basement suite was designed for one occupant and that the landlord had rented to the tenant with that understanding, and that the landlord preferred the lesser traffic, wear and tear and utility costs associated with a single occupant.

She stated that the tenant had verbally asked the landlord in the summer of 2011 if his nephew could move in, but the landlord denied the request, a conversation the tenant did not recall and contested.

The parties concur that in November of 2011, the tenant's sister and nephew moved in with him and remained resident in the rental unit at the time of the hearing, nearly five months later. The tenant submitted that, as the landlord had accepted the extra payments of \$100 per month since January 2012, he had acquiesced to the additional occupants.

Analysis

Section 47(1)(c) of the *Act* provides that a landlord may issue a Notice to End Tenancy for cause in circumstances in which, "there are an unreasonable number of occupants in a rental unit."

I accept the evidence of the landlord's advocate and spouse that, even though there is no written agreement, it is fundamental condition of the tenancy that it was and remains intended and appropriate for a single occupant. I further accept the evidence that the landlord has made that condition perfectly clear to the tenant in asking him verbally and in writing to find new accommodation before issuing the Notice to End Tenancy.

I accept the position of the landlord that the additional \$100 per month paid since January did not create a new rental agreement but simply provided for partial reimbursement of the utilities usage for five months of the tenancy due to the unauthorized additional occupants.

Therefore, I find that the Notice to End Tenancy was lawful and valid and I decline to set it aside. That part of the tenant's application is dismissed without leave to reapply.

As to the balance of the tenant's application, I find that the claims submitted are not sufficiently related to the Notice to End Tenancy to warrant their inclusion in the present hearing and they are dismissed with leave to reapply.

Conclusion

The Notice to End Tenancy of March 7, 2012 is upheld and the tenancy ends on April 30, 2012.

The tenant is at liberty to make application again for the unrelated disputes not addressed in the present hearing.

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 22, 2012.

Residential Tenancy Branch