



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, FF, O

Introduction

This hearing was convened by way of conference call in repose to the tenant's application to cancel the Notice to End Tenancy for cause and to recover the filing fee from the landlords for the cost of this application.

The tenant and landlords attended the conference call hearing, gave sworn testimony and were given the opportunity to cross exam each other and witness on their evidence. The landlord and tenant provided documentary evidence to the Residential Tenancy Branch and to the other party in advance of this hearing. All evidence and testimony of the parties has been reviewed and are considered in this decision.

Issue(s) to be Decided

Is the tenant entitled to cancel the One Month Notice to End Tenancy?

Background and Evidence

Both parties agree that this tenancy started on June 01, 2006. This is now a month to month tenancy and rent is \$865.27 per month due on the first day of each month in advance.

The landlord GR testifies that the tenant was served with a One Month Notice to End Tenancy on February 16, 2012 by leaving it in the tenant's mailbox. This notice has an effective date of March 31, 2012 and gives the following reasons to end the tenancy:

The tenant has allowed an unreasonable number of occupants in the unit

The tenant or a person permitted on the residential property by the tenant has

(iii) Put the landlord's property at significant risk;

The tenant or a person permitted on the residential property by the tenant has engaged in illegal activity that has

(iii) Jeopardized a lawful right or interest of another occupant or the landlord.

The landlord testifies that the tenancy agreement between the parties states that only the tenant and her two children may live at the rental unit. The landlord testifies that the tenant has allowed another person to live in the unit with the tenant since the middle of the summer 2011. The landlord testifies that they see this person at the tenant's unit every day coming and going with the tenant. The landlord testifies that they have received mail for this person at the rental address in his name from an insurance company and Canada Revenue. The landlords testify that they spoke to the tenant about this and were told the person named on these letters did not live in the unit and the tenant had returned the mail.

The landlord testifies that this person's truck is also parked outside every day and on one occasion the SPCA called because there had been a complaint that this person had left his dog in the truck on a hot summer's day. The landlord testifies that on two occasions last summer the tenants daughter came to the landlords' house because she needed the landlord to let her into the tenants unit. The landlord testifies that they asked

the tenant's daughter where her keys were and the landlord states the tenant's daughter said her mum had given her keys to her boyfriend.

The tenant disputes the landlords claims and testifies that she has no idea how Canada Revenue got her address for her boyfriend. The tenant states when the landlords spoke to her about this mail coming for her boyfriend the tenant assured the landlords that her boyfriend was not living in her unit and that she would get his address for the landlords. The tenant states the landlords would not accept this.

The tenant testifies that her boyfriend does spend time with her at her unit and he is there once in awhile but never for more than a week. The tenant states nether of her children reside with her anymore. The tenant disputes the landlords claim that she comes and goes from her unit with her boyfriend and states they are on different work schedules. The tenant disputes the landlords' claims that she has given a key to her boyfriend and states her daughter is resentful of the tenant and although she may have told the landlord this, the tenant has never given her daughters key to anyone.

The landlord testifies that the tenant has removed the smoke alarms to her unit on two occasions in 2009. The landlord testifies that in doing so this puts their home at risk of fire. The landlord agrees that when he inspected the unit in September 2011 the smoke alarms were in place. The landlord testifies the smoke alarms are not wired into the house but have batteries.

The landlord testifies the tenant has also changed the television cable system. The landlord explains that he was able to have both satellite television and cable television and could switch between the two systems taking advantage of any special deals in pricing. The landlord testifies that when he contacted Shaw cable to change his system over on January 15m, 2011 they told him the tenant had changed the system and now the landlord states he cannot get cable in the tenants unit.

The tenant testifies that her son did remove the smoke alarm in 2008 because it would not stop going off. The tenant testifies the smoke alarm is very sensitive to the oven and last year it went off for over two and half hours. The tenant states she went to the landlords and called the fire department about this and was told she would have to get in an electrician as the smoke alarm is wired in. The tenant testifies that in the end she turned off the power to the house in order to stop the alarm.

The tenant testifies that in August 2011 she received a phone call for a high speed internet promotion. Shaw came to her unit and told the tenant they would not have to change anything as everything goes through the same cables. The tenant agrees she does have satellite but no cable service.

The landlord KR testifies that in allowing another person to live in her unit the tenant has made the landlords fearful as they do not have any information about this person and have not been able to carry out any required checks on this person as requested information has not been provided by the tenant. The landlord testifies that the tenant's friend has allowed his dog to defecate in the back yard and now the landlords do not want to use their yard. The landlord testifies that they have reminded the tenant that any persons allowed on the property by the tenant remain the tenant's responsibility. The landlord state they are now fearful to leave their home as they live upstairs because of the unknown person the tenant has allowed to live there. The landlord agrees that the connecting door between their unit and the tenants is locked and alarmed.

The tenant testifies that the landlord told the tenant she could not have visitors in her unit. The tenant testifies that she asked the landlord if she could put her boyfriend on the tenancy agreement but the landlords did not want to do this. The tenant testifies that she is a good tenant and would not have a guest in her home that would harm the landlords or their property.

The tenants witness testifies that he is the tenant's boyfriend and lives at another address in a house he shares with his cousin. The witness testifies that he has no idea how Canada Revenue got the tenants address and he has never given this address to anyone as he does not even know what the address is.

The witness testifies that he is at the house everyday but does not always stay over and will return to his own house later in the evening. The witness states as he and the tenant are in a relationship they do have dinner together every evening. The witness testifies that when he insured his truck he could have given the tenants address as he does park his truck outside regularly but states his driving licence still has his old address on it.

The witness testifies that there was an incident with the SPCA when he left his dog in his truck but he no longer does this. The witness also states his dog did defecate on the landlords' lawn but the tenant picked it up.

The landlord declines to cross examine this witness.

The tenant testifies that she has now given her notice to the landlord and will be moving from the rental unit on March 31, 2012. However the tenant states she still seeks to have the Notice to End Tenancy cancelled.

Analysis

I have carefully considered all the evidence before me, including the sworn testimony of both parties and witness. In this matter, the landlord has the burden of proof and must

show (on a balance of probabilities) that grounds exist (as set out on the Notice to End Tenancy) to end the tenancy. This means that if the landlord's evidence is contradicted by the tenant, the landlord will generally need to provide additional, corroborating evidence to satisfy the burden of proof.

With regard to the landlords claim that the tenant has allowed an unreasonable number of occupants in the rental unit; as the tenant's children have left the home and the tenant is living there without the children. If the tenant has allowed another person to live in the rental unit I would not deem this to be an unreasonable number of occupants. However, the tenant would be responsible to provide the landlords with information about this person and get written permission from the landlords before this person begins to live in the unit. Consequently, this ground to end the tenancy has not been upheld.

With regard to the landlords claim that the tenant has put the landlords property at significant risk; I find there is insufficient evidence from the landlords to show that the tenant has put the landlords' property at significant risk as both parties agree the smoke alarm was replaced. However I caution the tenant to ensure the smoke alarms remain in working order and are not removed. If the smoke alarms are not in working order the tenant must notify the landlords in writing so the landlords may take the appropriate steps to repair or replace these alarms. Consequently, this ground to end the tenancy has not been upheld.

With regard to the landlords claim that the tenant has engaged in illegal activity that has jeopardized a lawful right or interest of the landlords. As the landlords have provide no evidence to base this assumption on and the mere suspicion of an illegal activity that would jeopardize the lawful right or interest of the landlord is insufficient to uphold this ground to end the tenancy. Consequently, this ground is also dismissed.

As the landlords have not met the burden of proof in this matter the One Month Notice to End Tenancy is therefore cancelled. As the tenant has been successful the tenant is entitled to recover the \$50.00 filing fee from the landlord pursuant to s. 72(1) of the Act.

Conclusion

The tenant's application is allowed. The one Month Notice to End Tenancy for Cause dated February 16, 2012 is cancelled and the tenancy will continue.

A copy of the tenants' decision will be accompanied by a Monetary Order for \$50.00. The order must be served on the respondents and is enforceable through the Provincial Court as an order of that Court.

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 07, 2012.

Residential Tenancy Branch