



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC

Introduction

This hearing dealt with an Application for Dispute Resolution by the Tenant to cancel a notice to end tenancy for cause.

The parties appeared at the teleconference hearing, acknowledged receipt of evidence submitted by the other and gave affirmed testimony. During the hearing each party was given the opportunity to provide their evidence orally, respond to each other's testimony, and to provide closing remarks. A summary of the testimony is provided below and includes only that which is relevant to the matters before me.

Issue(s) to be Decided

1. Has a valid 1 Month Notice to End tenancy for cause (the Notice) been issued in accordance with sections 52 and 47 of the *Residential Tenancy Act*?
2. If so, has the Landlord met the burden of proof to end this tenancy in accordance with the Notice, pursuant to section 47 of the *Residential Tenancy Act* (the Act)?

Background and Evidence

The parties agreed they entered into a written month to month tenancy that began on May 1, 2009. The monthly rent is due on the first of each month in the amount of \$825.00 and on March 23, 2009 the Tenant paid \$412.50 as the security deposit.

The Landlord affirmed she has been resident manager since February 13, 2012 and since that time she has known of a male living in the Tenant's rental unit. It was not until a few weeks later that she determined the Tenant is the only one listed on the tenancy agreement and that this male is the Tenant's brother. The Landlord asserts that the brother has been residing in the rental unit in contravention of section #8 of their tenancy agreement as there is no information in the Tenant's file which indicates her brother has been added as a tenant. The Landlord confirmed this is the reason why

they issued the Notice for the Tenant allowing an unreasonable number of occupants in the unit.

For the remaining reasons for issuing the Notice the Landlord alleges the Tenant's brother is involved in illegal activity of selling drugs out of the rental unit. She stated she is of this opinion because there are a lot of people coming to the rental unit for a very short period of time. The Landlord advised that on March 23, 2012 she saw someone attend the unit around noon and he only stayed one minute. Then on March 29, 2012 the same person came for another minute or two. On April 17, 2012 the brother was seen doing an exchange of something at the exit door at which time she called the police. The Landlord advised they have called the police on several occasions reporting license plate numbers of vehicles that are at the unit and the police have informed her these people are well known to police.

The Landlord confirmed she has no evidence that the Tenant or her brother have been charged with illegal activity however she argues their activities and actions are indicative of drug dealing. She further confirmed that the only notices or warning letters were issued to the Tenant in April 2011 and that no written or verbal warnings have been issued since she has been resident manager.

The Tenant affirmed that her brother is a guest and he will no longer be visiting her as of April 30, 2012. She stated that her apartment is a two bedroom unit and that her seven year old son and herself are the only tenants. The Tenant stated that there are no drug dealings going on at her rental unit and she wishes to have this Notice cancelled.

Analysis

Upon review of the 1 Month Notice to End Tenancy, I find the Notice to be completed in accordance with the requirements of section 52 of the Act and I find that it was served upon the Tenant in a manner that complies with section 89 of the Act.

The Notice was issued pursuant to Section 47(1) of the Act for the following reasons:

- Tenant has allowed an unreasonable number of occupants in the unit/site
- Tenant or a person permitted on the property by the tenant has:
 - Significantly interfered with or unreasonable disturbed another occupant or the landlord
 - Seriously jeopardized the health or safety or lawful right of another occupant or the landlord
 - Put the Landlord's property at significant risk

- Tenant has engaged in illegal activity that has or is likely to
 - Adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant or the landlord.

When considering a 1 Month Notice to End Tenancy for Cause the Landlord has the burden to provide sufficient evidence to establish the reasons for issuing the Notice to End Tenancy.

The Landlord provided testimony that the Tenant was not issued any written warnings nor has she been issued verbal warnings to indicate the Tenant may be in breach of her tenancy agreement by allowing her brother to occupy the rental unit or by having guests that attend the unit on a regular basis.

Section 47 1) (h) of the Act provides that the Landlord may end a tenancy by giving notice to end the tenancy if the tenant has not corrected the situation within a reasonable time after the **landlord gives the tenant written notice to do so.**

The Tenant testified that her brother is currently a guest and he will be vacating the property as of April 30, 2012. She further testified that there are no illegal activities being conducted at the rental property.

Where one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof has not met the onus to prove their claim and the claim fails. In this case, the Landlord has the burden to prove they have cause to end this tenancy in accordance with the Act. Accordingly, the only evidence before me was verbal testimony and I find the disputed verbal testimony insufficient to meet her burden of proof.

Based on the aforementioned I find that the Landlord has not succeeded in meeting the burden of proof for issuing the 1 Month Notice to End Tenancy issued on March 29, 2012, and I therefore cancel the Notice.

The Tenant understands that if her brother is found to be residing at the rental unit after April 30, 2012 or there is evidence of illegal activity at the rental unit is verified by the Landlord in the future, the record of these events would form part of the Landlord's case should it again come before a dispute resolution officer for consideration.

Conclusion

As I have determined that the Landlord has not met the requirements of section 47 of the Act to end this tenancy for cause, I am granting the Tenant's application to set aside the 1 Month Notice to End Tenancy and this tenancy shall continue.

The 1 Month Notice to End Tenancy, issued March 29, 2012, is HEREBY CANCELLED and is of no force or effect.

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: April 20, 2012.

Residential Tenancy Branch