



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: CNC; AS; FF

Introduction

This Hearing dealt with the Tenant's application cancel a *One Month Notice to End Tenancy for Cause* (the Notice) issued April 24, 2012; for an Order allowing the Tenant to assign or sublet the rental unit; and to recover the cost of the filing fee from the Landlord.

The parties gave affirmed testimony and had an opportunity to be heard and respond to other party's submissions.

It was established that the Landlord received the Notice of Hearing documents on May 2, 2012, and that the parties exchanged their documentary evidence.

Preliminary Matter

At the outset of the Hearing it was determined that the Tenant did not wish to sublet or assign the rental unit and therefore, this portion of his application is dismissed.

Issue to be Decided

Should the Notice issued April 24, 2012, be cancelled?

Background and Evidence

This tenancy began March 1, 2003. Monthly rent does not include utilities. The rental unit is a 2 bedroom apartment in an 11 unit building.

The Landlord's agent testified that the Tenant is in breach of a material term of the tenancy agreement because he has an occupant living with him without the Landlord's permission (clause 9 of the tenancy agreement). He stated that the Tenant was provided written notice of the breach on February 6, 2012; March 19, 2012; and April 2, 2012, but the Tenant has not corrected the breach. A copy of the tenancy agreement and copies of the written warning letters were provided in evidence.

The Tenant testified that he believes that the Landlord withholding permission is unfair. He stated that until 2010, when the current agent became property manager, a previous agent allowed the Tenant to have other occupants living with him on five separate occasions.

The Landlord's agent stated that the occupant's references and credit rating were not satisfactory. He also stated that the Landlord did not want to set a precedent by allowing just anyone to live in the building. He said that by excluding some occupants from the building, the Landlord was protecting other tenants' rights.

Analysis

In this case, the rental unit is a two bedroom suite and therefore an additional occupant does not cause safety or overcrowding concerns. The Tenant pays for his own utilities, and therefore the Landlord does not incur those additional costs.

The Landlord's agent stated that the occupant's references and credit rating were not satisfactory. The Landlord provided no evidence that the occupant had a criminal history of violence or damaging property.

An occupant has no rights or obligations under the Residential Tenancy Act. If the Tenant fails to pay rent the Landlord may serve the Tenant with a notice to end the tenancy for unpaid rent. Likewise, if the Tenant's occupant unreasonably disturbs others in the building, or causes extraordinary damage, the Landlord may serve the Tenant with a notice to end the tenancy for cause. These are the remedies available to a Landlord under the Act. If the Tenant is evicted, so is the occupant.

Clause 9 of the tenancy agreement states:

"A person not listed in paragraph 2 above who resides in the premises for a period in excess of two weeks in any calendar year shall be considered to be occupying the premises contrary to this Agreement and without the right or permission of the landlord. This person shall be considered a trespasser. A tenant anticipating an additional person in the premises shall promptly apply in writing for permission from the landlord for such person to become a permanent occupant. Failure to apply and obtain the **necessary approval of the landlord in writing** is a breach of a reasonable material term of this Agreement. The Landlord may at his option give immediate notice to end the Agreement or may at his option give notice to the tenant to immediately correct the breach. The landlord has the right to end the tenancy, if the tenant fails to correct the said

breach within a reasonable time after having been given written notice by the landlord.”

(emphasis added)

The Landlord's agent did not dispute that the Tenant has been given permission to house five other occupant on different occasions over the term of this tenancy without the requirement that the Landlord's permission be in writing.

I find that the Landlord has not applied clause 9 of the tenancy agreement in any uniform way over the years and therefore I find that clause 9 of the tenancy agreement is not a material term of the tenancy.

I grant the Tenant's application to cancel the Notice to End Tenancy. The tenancy remains in full force and effect until it is ended in accordance with the provisions of the Act.

The Tenant has been successful in his application to cancel the Notice and I find that he is entitled to recover the cost of the \$50.00 filing fee from the Landlord. Pursuant to the provisions of Section 72 of the Act, the Tenant may deduct **\$50.00** from future rent due to the Landlord.

Conclusion

The Notice to End Tenancy issued April 24, 2012, is cancelled. The tenancy remains in full force and effect until it is ended in accordance with the provisions of the Act.

The Tenant may deduct **\$50.00** from future rent due to the Landlord.

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: May 28, 2012.

Residential Tenancy Branch