



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

CNC, FF

Introduction

This hearing dealt with an application by the tenant for an order to set aside a notice to end tenancy. The tenant also requested that his application be amended to include the recovery of the filing fee. Both parties attended the hearing and had opportunity to be heard.

Issue to be Decided

Does the landlord have grounds to end this tenancy?

Background and Evidence

The tenancy began on April 28, 2012. The monthly rent is \$1,250.00 payable on the first of each month. The tenant filed a copy of the rental agreement which names both applicants as occupants of the rental unit.

The tenant filed copies of letters sent by the Strata Council to the landlord regarding the landlord's application to the Strata for permission to allow tenants to move into the rental unit. The letters are dated May 02 and May 31, 2012 and they notify the landlord that her application for approval to rent the unit is denied. The letters also request that the landlord have the tenants removed from the unit immediately pursuant to the bylaws of the strata regarding rental restrictions.

On June 09, 2012, the landlord served the tenant with a one month notice to end tenancy for cause. The notice was served for the following reasons;

1. Tenant has allowed an unreasonable number of occupants in the unit.
2. Tenant has put the landlord's property at significant risk
3. Tenant has assigned or sublet the rental unit without landlord's written consent
4. Tenant knowingly gave false information to prospective tenant or purchaser of the rental unit.

As explained to the landlord, in order to end the tenancy, the landlord must prove at least one of the above reasons cited on the notice to end tenancy.

The landlord did not file any documentary evidence. She stated that the tenant has allowed his father to reside in the rental unit. The tenant pointed out to section of the tenancy agreement that names the occupants of the rental unit. This section lists both applicants as occupants

The landlord stated that the tenant knowingly gave false information to the owner of the unit. I explained to the landlord that she has alleged that the tenant knowingly gave false information to a prospective tenant or purchaser of the unit, which does not apply in this case.

The landlord stated that the tenant has put her property at risk by smoking inside the rental unit and outside the unit but on the property. The tenant argued that he does not smoke inside the unit and there are no restrictions in the tenancy agreement with regard to smoking.

Analysis

In order to support the notice to end tenancy, the landlord must prove at least one of the grounds alleged.

1. Tenant has allowed an unreasonable number of occupants in the unit.

The tenancy agreement lists both applicants as occupants. Since there are only two persons residing in the rental unit, I find that the landlord has not proven the above allegation.

2. Tenant has put the landlord's property at significant risk

The landlord stated that the tenant has put the property at significant risk by smoking inside and around the rental unit. Since the tenant denies smoking inside the rental unit and the tenancy agreement does not make any reference to smoking restrictions, I find that the tenant has not breached a term of the agreement. While the landlord may argue that smoking puts the landlord's property at risk, the landlord has the burden of proving that the actions of the tenant put the property at *significant* risk.

3. Tenant has assigned or sublet the rental unit without landlord's written consent

The landlord stated that the tenant has sublet the rental unit to his father. However, both the tenant and his father are listed as occupants on the tenancy agreement. Therefore I find that the landlord's allegation is not proven.

4. Tenant knowingly gave false information to a prospective tenant or purchaser of the rental unit.

The landlord stated that the tenant knowingly gave false information to the owner of the rental unit but alleges that the tenant knowingly gave false information to a prospective tenant or purchaser of the rental unit. Even if I accept that the tenant knowingly gave false information, which I do not believe to be true, the owner cannot be said to be a prospective tenant or purchaser and therefore this allegation is without grounds.

Based on the testimony of both parties, I find that the landlord has not proven any of the grounds alleged. I further find that the landlord has been ordered by the strata council to remove the tenant and therefore served the tenant with a notice to end tenancy.

I therefore allow the tenant's application and set aside the landlord's Notice to End Tenancy dated June 09, 2012. As a result, the tenancy shall continue in accordance with its original terms.

Since the tenant has proven his case he is entitled to the recovery of his filing fee. The tenant may make a onetime deduction of \$50.00, off a future rent.

Conclusion

The notice to end tenancy is set aside and the tenancy will continue.

The tenant may make a onetime deduction of \$50.00 off his monthly 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: June 27, 2012.

Residential Tenancy Branch