



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC and FF

Introduction

This hearing was convened on the tenants' application of September 13, 2012 to have set aside a Notice to End Tenancy for cause, dated September 4, 2012 and setting an end of tenancy date of October 31, 2012. The tenant also sought to recover the filing fee for this proceeding from the landlord.

As a matter of note, this tenancy was the subject of a hearing on September 4, 2012 on the tenant's application to have set aside a Notice to End Tenancy for landlord use. In her decision of September 4, 2012, the Dispute Resolution Officer set the Notice to End Tenancy aside on the grounds that the landlord did not yet have the permits required to renovate the rental building as cited in the notice.

Issue(s) to be Decided

Should the Notice to End Tenancy for cause dated on September 4, 2012 be set aside or upheld.

Background and Evidence

The rental unit is one of two in a heritage building of approximately 6,000 square feet which the landlord intends to convert to four units. The tenancy began on January 1, 2011 at a monthly rent of \$1,900 and the landlord holds a security deposit of \$450.

During the hearing, the landlord's agent gave evidence that the Notice to End Tenancy had been served for repeated late payment of rent, and because the tenant had too many occupants in the rental unit.

The tenant stated that the notice was retaliatory because his application to set aside the earlier notice for landlord use had succeeded.

As to repeated late rent, the landlord submitted documentary evidence showing that rent due on the first day of the month had been paid on October 17, 2011, December 3, 2011, January 3, 2012 and March 9, 2012.

The parties were in disagreement as to whether August 2012 rent had been paid on the first or second day of the month as the tenant customarily pays by instant Interact email transfer late in the day on the first. In the absence of documentary evidence to the contrary, and as the burden of proof falls to the landlord, I find that the benefit of the doubt should go to the tenant.

With that, and including the rent for October 2012, the tenant has paid the rent on time seven months in succession.

As to the earlier late payments, I note the absence of any written warnings to the tenant to the effect that further late payments could result in a Notice to End Tenancy.

On the question of number of occupants in the rental unit, the agent advised that the landlord was displeased to find five additional persons living in the rental unit in the summer of 2011 after the tenant had taken the tenancy for himself and his daughter only.

The agent stated that the tenant was, in effect, subletting the rental unit without consent in contravention of section 34 of the *Act*.

Analysis

As to the issue of repeated late payment of rent, section 47(1)(b) of the *Act* provides that a landlord may issue a Notice to End Tenancy for repeated late payment of rent. Branch policy guidelines set three late payments within one year as a general threshold for finding repeated late payment.

Given the tenant's unblemished record for the last seven months and the absence of a prior written warning, I must find that the previous breaches were accepted by the landlord.

Similarly, in the absence of a copy of the written rental agreement limiting the number of occupants in the rental unit, and given that the matter did not given rise to an action by the landlord when it first came to light well over a year ago, I cannot find contemporary cause to end the tenancy over the number of occupants in the rental unit.

While I do not find sufficient cause to end the tenancy, I do find that the tenant's conduct contributed to this dispute to a degree and I find that he should remain responsible for his own filing fee.

Conclusion

The Notice to End Tenancy of September 4, 2012 is set aside and the tenancy continues.

The tenant's request to recover the filing fee for this proceeding from the landlord is dismissed.

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: October 17, 2012.

Residential Tenancy Branch