



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPC, CNC

Introduction

This hearing was convened in response to an application by the Tenant and an application by the Landlord pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

The Tenant applied on September 6, 2012 for:

1. An Order cancelling a Notice to End Tenancy – Section 46; and
2. An Order allowing the Tenant more time to make an application to cancel a Notice to End Tenancy – Section 66.

The Landlord applied on October 9, 2012 for:

1. An Order of Possession - Section 55.

The Tenant and Landlord were each given full opportunity to be heard, to present evidence and to make submissions. It is noted that the Tenant’s request for an order for more time is a matter that was determined in a previous Decision dated October 22, 2012 and is therefore no longer a matter that requires determination.

Issue(s) to be Decided

Is the Notice to End Tenancy valid?

Is the Tenant entitled to a cancellation of the Notice to End Tenancy?

Background and Evidence

No copy of the one month notice to end tenancy for cause (the “Notice”) was provided by either Party and the Landlord does not recall when the Notice was served on the Tenant or the effective date of the Notice. The Tenant states that they received the Notice sometime during the first week of October 2012. The Landlord states that two

reasons were identified in the Notice; the Tenant states that only one reason was on the Notice. The Parties agree that one reason is as follows:

“The Tenant has allowed an unreasonable number of occupants in the unit.”

The tenancy of a three bedroom unit started on October 1, 2005. The Witness, a daughter of the Tenant, states that prior to this tenancy the family comprised of the Tenant, the Witness and a grandchild, lived in the lower two bedroom unit since 2000. This family unit continues to reside in the upper unit.

The Landlord argues that only the Tenant may occupy the unit as this is the only Tenant on the tenancy agreement. It is noted that the tenancy agreement does not indicate a limit on occupants of the unit. The Landlord also states that the tenant in the lower unit has also informed the Landlord by email that this tenant suspects that the Tenant has moved out and that the remaining occupants are the daughter, the grandson and the daughter's partner.

The Witness states that the lower tenant may suspect that the Tenant has moved out because this tenant would have witnessed a large moving truck at the residence but that this truck was there only to move a grand piano that the Tenant was giving to his brother. Further, the Witness states that the Tenant's sister has cancer and that the Tenant has been spending a significant amount of time with his sister for this reason. The Tenant states that only the three people live in the unit but that an uncle visits regularly. The Witness states that this uncle owns and lives in a nearby condo. The Witness states that they have lived in this house for many years and view it as the family home and that they also know and love the community.

Analysis

Where a Notice to End Tenancy comes under dispute, the landlord has the burden to prove, on a balance of probabilities, that the tenancy should end for the reason or reasons indicated on the Notice and that at least one reason must constitute sufficient

cause for the Notice to be valid. Given that no copy of the Notice was provided as evidence and considering the Parties could only agree on one reason being in the Notice, I find that the Landlord has substantiated that the Notice contains only one reason.

Given the Witness evidence of three persons living in the three bedroom unit and the lack of evidence of any additional persons living in the unit, considering that the same number of persons are currently living in the unit as were from the beginning of the tenancy and the tenancy agreement does not restrict the number of occupants, I find that the Landlord has not substantiated on a balance of probabilities that the Tenant has allowed an unreasonable number of occupants in the unit. I find therefore that the Notice is not valid and that the Tenant is entitled to a cancellation of the Notice. The Landlord's application is dismissed.

Conclusion

The Notice to End Tenancy is cancelled and of no effect. The tenancy continues.

The Landlord's application 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: November 13, 2012.

Residential Tenancy Branch