



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 by the tenant to dispute a notice to end tenancy for cause. The tenant and the landlord participated in the teleconference hearing.

At the outset of the hearing, each party confirmed that they had received the other party's evidence. Neither party raised any issues regarding service of the application or the evidence. I have reviewed all testimony and other evidence. However, only the evidence relevant to the issues and findings in this matter are described in this decision.

Issue(s) to be Decided

Is the notice to end tenancy valid?

Background and Evidence

On October 22, 2012, the landlord served the tenant with a notice to end tenancy for cause. The notice indicated that the reason for ending the tenancy was that the tenant had breached a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.

In the hearing, the landlord stated that the term of the tenancy agreement which the tenant had breached was in regard to additional occupants. The clause states, in part:

When a person is not listed in the names of the tenants, resides in the premises for a period in excess of two weeks in any calendar year, he shall be deemed 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.... Failure to apply and obtain the necessary approval of the landlord in writing is considered a fundamental breach of this Agreement. The landlord may at his option give immediate notice of termination of the Agreement or may at his option give notice to the Tenant to immediately correct the breach. The landlord has the right to terminate the tenancy immediately, if the Tenant fails to immediately correct the said breach.

Analysis

I find that the notice to end tenancy is not valid.

The clause of the tenancy agreement that the landlord claimed the tenant has breached is extremely problematic and, in several respects, contrary to the *Residential Tenancy Act*. For example, it is not reasonable for a guest of the tenant to be deemed an occupant because that guest has stayed in the rental unit on one or two nights per month for a total of 14 days in a calendar year. The clause then allows the landlord to make a determination that the unauthorized occupant has committed the offence under the *Criminal Code* of trespassing. Further, the landlord does not have authority under the Residential Tenancy Act to then “immediately” terminate the tenancy agreement or give notice to the tenant to “immediately” correct the breach. For these reasons, I find that the clause in the tenancy agreement regarding additional occupants is void and of no force or effect.

As the clause of the tenancy agreement regarding additional occupants is void, the notice to end tenancy that relies on this clause is also void.

Conclusion

The notice to end tenancy dated October 22, 2012 is cancelled, with the effect that the tenancy continues.

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 21, 2012.

Residential Tenancy Branch