



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

Landlord: OPC, FF
Tenant: CNC, FF

Introduction

This hearing dealt with cross Applications for Dispute Resolution. The landlord sought an order of possession and the tenant sought to cancel a notice to end tenancy.

The hearing was conducted via teleconference and was attended by the landlord; her agent; her witness and the tenant. The tenant had arranged for a witness to be available but she was not called upon to provide testimony.

Issue(s) to be Decided

The issues to be decided are whether the landlord is entitled to an order of possession for cause; to a monetary order to recover the filing fee from the tenant for the cost of the Application for Dispute Resolution, pursuant to Sections 47, 55, 67, and 72 of the *Residential Tenancy Act (Act)*.

It must also be decided if the tenant is entitled to cancel a 1 Month Notice to End Tenancy for Cause and to a monetary order to recover the filing fee from the landlord for the cost of the Application for Dispute Resolution, pursuant to Sections 47, 67, and 72 of the *Act*.

Background and Evidence

The landlord has provided the following documents into evidence:

- A copy of a tenancy agreement signed by the parties on January 7, 2011 for a month to month tenancy beginning on February 1, 2011 for the monthly rent of \$1,200.00 due on the 1st of each month with a security deposit of \$600.00 paid; and
- A copy of a 1Month Notice to End Tenancy for Cause issued on February 22, 2013 with an effective vacancy date of March 31, 2013 citing the tenant has allowed an unreasonable number of occupants in the unit; the tenant or a person permitted on the property by the tenant has significantly interfered with or

unreasonably disturbed another occupant or the landlord; and the tenant has assigned or sublet the rental unit without landlord's written consent.

The landlord submits, in regard to the issue of unreasonably disturbing another occupant or the landlord the tenant was provided a warning letter in November 2012 that noted the landlord had received a large number of complaints from the other tenant in the residential property that this tenant was playing music very loud and that this is not acceptable. In addition the letter referred noises from when the tenant was exercising and the sound of jumping and that there have been too many parties.

The landlord submits that the tenant has continued to cause these disturbing and that she has received complaints from the other tenant in the residential property and from neighbours. The other tenant provided testimony that there had been some loud music on occasion but that once discussed with the tenant these no longer occur. The witness also noted that the noise from the jumping had stopped but then the tenant installed a dance pole and that when using the pole there is again a noise issue.

The landlord submits that she warned the tenant about the pole and that he couldn't use it because of the noise complaints and that he had stopped for a while but then started using it again. The landlord submits that she has received complaints from other neighbours as well but that they were not willing to provide any statements or testimony.

The tenant submits that whenever a problem has been identified from the tenant upstairs or the landlord with regard to noise he has tried to work it out with the tenant to ensure that he is not disturbing him any longer.

The landlord also submits that the tenancy agreement stipulates that names of all occupants in the rental unit at the start of the tenancy and that the female had moved out. The landlord notes that clause 5 of the Tenancy Agreement stipulates that "the tenant agrees that except for casual guests, no other persons shall occupy the premises without written consent of the landlord.

The landlord submits that the tenant has had another woman move in to the rental unit without the landlord's consent and that the landlord has had an unpleasant altercation with this woman.

The tenant testified that the person named in the tenancy agreement still lives in the rental unit with him and the woman the landlord has identified is a female friend of the tenant who has spent the night in the rental unit on several occasions but that she does not live in the rental unit.

The landlord submits that she has seen the woman's car at the rental unit at least 8 times over the course of several months. For these reasons, the landlord seeks to end the tenancy because the tenant has allowed an unreasonable number of occupants in

the unit and the tenant has assigned or sublet the rental unit without the landlord's written consent.

Analysis

Section 47 of the *Act* allows a landlord to end a tenancy by giving notice to end the tenancy if one or more of the following applies:

- a) There are an unreasonable number of occupants in a rental unit;
- b) The tenant or a person permitted on the residential property by the tenant has
 - i. Significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property,
- c) The tenant purports to assign the tenancy agreement or sublet the rental unit without first obtaining the landlord's written consent as required by section 34;

In relation to the landlord's submission regarding an unreasonable number of occupants I find that, even if the landlord has provided sufficient evidence to establish that the female occupant named in the tenancy agreement had moved out of the rental unit and the tenant had a new occupant move in without the landlord's consent the number of occupants would have remained unchanged.

In addition, as the landlord had agreed to the there being two occupants in the rental unit at the start of the tenancy I find the landlord cannot now stipulate that two is an unreasonable number of occupants. Therefore I find the landlord has failed to establish this as a cause to end the tenancy.

The landlord asserts the tenant has assigned or sublet the unit without the landlord's written consent. Residential Tenancy Policy Guideline 19 defines assignment as the act of transferring all or part of a tenant's interest in or rights under a tenancy agreement to a third party, who becomes the tenant of the original landlord and subletting is entering into a tenancy agreement with a third party (sub-tenant) but that the tenant would become the landlord of the sub-tenant and there is no contractual relationship between the owner landlord and the sub-tenant.

From the evidence and testimony provided I find that even if the tenant has had a change in roommates there is no evidence before me such as a tenancy agreement between the tenant and the sub-tenant, to confirm that the tenant has assigned or sublet the rental unit to any other party. As such, I find the landlord has failed to establish this as a cause to end the tenancy.

In relation to the noise disturbances I find, based, in part, on the landlord's witness's testimony that while there have been disturbances in the past the tenant has adjusted his behaviour and these disturbances have been reduced. I also find that the landlord has failed to provide sufficient evidence of any specific incidents or complaints since the warning letter had been issued that would warrant being found an unreasonable disturbance.

Conclusion

Based on the above, I find the landlord has failed to establish cause sufficient to end the tenancy and I cancel the 1 Month Notice to End Tenancy for Cause issued on February 22, 2013 and find the tenancy will remain in full force and effect.

However, I caution the tenant that as a result of this notice and these proceedings the tenant should consider that the landlord has provided the tenant sufficient warning of issues in this tenancy that require his compliance and that should any breach of these issues occur, even once, the landlord may have sufficient cause to end the tenancy.

I dismiss the landlord's Application in its entirety.

As the tenant was successful in his Application I find the tenant is entitled to monetary compensation pursuant to Section 67 order that the tenant may deduct this amount from a future rent payment in accordance with Section 72(2)(a).

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: March 21, 2013

Residential Tenancy Branch

