



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, FF

Introduction

A substantial amount of documentary evidence, photo evidence, and written arguments has been submitted by the parties prior to the hearing. I have thoroughly reviewed all submissions.

I also gave the parties the opportunity to give their evidence orally and the parties were given the opportunity to ask questions of the other parties.

All testimony was taken under affirmation.

Issue(s) to be Decided

This is an application to cancel a Notice to End Tenancy for cause, and a request for an Order for recovery of the filing fee.

Background and Evidence

On April 12, 2013 the landlord served the tenant with the Notice to End Tenancy giving the following reasons:

1. Tenant or person permitted on the property by the tenant has:

- significantly interfered with or unreasonably disturbing another occupant or the landlord
 - put the landlord's property at significant risk.
2. Breached a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.

The landlords testified that:

- In the addendum to the tenancy agreement there are three clauses which the tenant has breached.
- Clause number 2 regarding pets, the tenant stated they had no pets, and then moved the cat into the rental unit.
- Clause number 3 regarding smoking, no smoking is allowed in the rental unit however the tenant has allowed smoking in the garage of the rental unit causing a strong smoke smell throughout the property including in the other tenants suite.
- Clause number 9 regarding additional occupants, this clause requires that the tenant get the landlords written agreement to move any other occupants into the rental unit, however the tenant moved a person she calls her husband into the rental unit without even notifying the landlord that she was doing so.
- Further the person that the tenant has moved in to the rental unit became confrontational with both them and some prospective tenants when they were attempting to show the tenants the other rental unit. As a result they lost possible future tenants.
- When they found out about the breaches of the tenancy agreement they sent a letter to the tenant requesting that the breaches be rectified, however the tenant has failed to do so and will not even give us the full name of the person she has moved into the rental unit.
- Due to these breaches of the tenancy agreement, and the tenant's failure to rectify the breaches, they have given the Notice to End Tenancy and they want this tenancy ended.

The tenant testified that:

- My husband did move into the rental unit and I did not get written permission from the landlords for him to do so, however the landlord had verbally agreed to allow my husband to move in.
- My husband does not smoke in the rental unit, he only smokes outside however they have noticed that if they leave the garage door open when he is smoking, the smoke does enter the rental property and gets throughout their rental unit.
- They did move a cat into the rental unit, because the person to whom they had given their cat could no longer take care of it, and therefore they took it back in temporarily. The landlord verbally told them they could have the cat and make installment payments on the pet deposit; however in writing the landlord reneged on that agreement and said they cannot make installment payments.
- They therefore have since gotten rid of the cat.

Analysis

It is my finding that the tenant has breached a material term of this tenancy agreement and has failed to rectify the breach even after receiving written notice to do so.

The tenant claims that the landlord gave her verbal permission to have her husband move into the rental unit, however the landlord denies ever giving such permission and it's my finding that the tenant has not met the burden of proving her claim.

The tenancy agreement is very clear when it states that written permission is required to have additional occupants live in the rental unit, and the tenant has never acquired written permission. In fact the tenant originally moved the additional occupant in without even informing the landlords that she had done so.

Therefore since I have found that the tenant has breached a material term of the tenancy agreement and failed to rectify that breach, I will not set aside the Notice to End Tenancy.

Having upheld this Notice to End Tenancy on the grounds that the tenant failed to get permission to have an additional occupant, there is no need for me to make a finding on the landlord's claims of other breaches of the tenancy agreement.

Conclusion

This application is dismissed in full without leave to reapply, and upon application from the landlords I've issued an Order of Possession that is enforceable two days after service on the tenant.

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: May 22, 2013

Residential Tenancy Branch

