



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding City of Burnaby
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC

Introduction

This hearing dealt with an application by the tenant to cancel a notice to end tenancy for cause. Both the tenant and an agent for 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 March 1, 2013, the landlord served the tenant with a notice to end tenancy for cause. The reason cited on the notice for ending the tenancy was that the tenant had assigned or sublet the rental unit without the landlord's consent. The tenancy agreement contains a clause that states that the tenant may not assign or sublet the premises, take in a boarder or invite anyone including relatives to live in the residence on a permanent basis. Further, any guest of the tenant will not be allowed to stay for more than one month without the prior written permission of the landlord.

Landlord's Evidence

The landlord stated that on February 25, 2013, it first came to the landlord's attention that the tenant may have an additional person, not named on the tenancy agreement, occupying the basement of the rental unit. On February 26, 2013 the landlord spoke to the tenant. The landlord's evidence was that the tenant told the landlord that she was renting out the basement to the occupant for \$600 per month. The landlord stated that he then informed the tenant that she did not have permission to rent out her basement and the landlord would be issuing a one-month notice to end tenancy. It was the landlord's position that the tenant was subletting the rental unit in contravention of the tenancy agreement.

Tenant's Response

The tenant stated that in December 2012 she allowed a friend to temporarily stay in the basement of the rental unit. The tenant's friend had not found a new place in January 2013. The tenant told her friend that she was going to have to move out, and her friend moved out in mid-February 2013. The tenant's friend asked if her son could move in, but the tenant said no. The tenant's friend and her son came to the rental unit on March 3, 2013 to pick up their possessions. The tenant's friend is the one who offered to pay \$600 while she was staying in the basement of the rental unit. The tenant stated in the hearing that she understands she cannot have other occupants in the rental unit.

Analysis

I find that the notice to end tenancy is not valid. The tenant did not assign or sublet the rental unit to her friend. When the tenant's friend stayed longer than one month and paid money toward the rent, her friend became an occupant of the rental unit, similar to having a roommate.

The tenant breached her tenancy agreement by either taking in a boarder or having a guest for more than one months without the prior written permission of the landlord; however, the remedy for a material breach of the tenancy agreement would be for the landlord to give the tenant written notice of the breach and allow the tenant a reasonable time to remedy the breach. If the tenant did not then remedy the breach by having the occupant move out, then it would be open to the landlord to serve the tenant with a notice to end tenancy for breach of a material term that the tenant did not remedy after written notice to do so.

Conclusion

The notice to end tenancy 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: May 3, 2013

Residential Tenancy Branch

