



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC FF

Introduction

This hearing dealt with an application by the tenants to cancel a notice to end tenancy for cause. Two tenants and one 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

The tenancy began on November 1, 2012. The tenancy agreement indicates that the two tenants, HL and MW, would be the only occupants of the rental unit, unless otherwise authorized by the landlord.

On April 25, 2013, the landlord served the tenants with a notice to end tenancy for cause. The notice indicates that the reason for ending the tenancy is that the tenants have allowed an unreasonable number of occupants in the rental unit.

Landlord's Evidence

The landlord stated that the reason for giving the tenants the notice to end tenancy was that the tenants had a teenage girl, a foster child, living with them in the rental unit. The tenants did not seek the landlord's written permission to have another person living there. The landlord told the tenants that they were violating their tenancy agreement,

and the tenants said that they may be moving out. The tenants did not move out and the girl remained in the rental unit. The unit is a one-bedroom plus den, and the den has no windows, so there is no egress in case of a fire.

The landlord denied ever waiving the clause of the tenancy agreement regarding the number of occupants in the rental unit. He did recall saying it was okay for the male tenant's children to come and stay some weekends, but he did not recall having a discussion with the tenants about allowing their nephew to live with them full-time.

Tenants' Response

The tenants stated that when they first looked at the rental unit, they talked to the landlord about having their nephew stay with them to help with the rent, and the landlord did not object. The tenants have dealt most of the time with the landlord's son, who told the tenants that they were willing to waive the clause of the tenancy agreement only allowing two occupants. The tenants stated that the landlord never made an issue of anything until the tenants complained about one of many late-night teenage parties upstairs in the landlord's son's unit. Then they were served with the notice to end tenancy.

Analysis

I find that the notice to end tenancy is not valid. I find that the landlord did not provide sufficient evidence to demonstrate that having three occupants in the rental unit was excessive. Further, the landlord did not provide any evidence of bylaws preventing three persons from occupying the unit. It may be that the tenants have breached a term of their tenancy agreement, and it is open to the landlord to seek to end the tenancy for another cause. However, the landlord only alleged that there were an unreasonable number of occupants in the unit, and I therefore cancel the notice.

Conclusion

The notice to end tenancy is cancelled, with the effect that the tenancy continues.

The tenants are entitled to recovery of their \$50 filing fee for the cost of their application. They may deduct this amount from their next month's rent.

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 21, 2013

Residential Tenancy Branch

