



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding PARKVIEW APARTMENTS
and [tenant name suppressed to protect privacy]

Decision

Dispute Codes:

CNC, MNDC

Introduction

This Application for Dispute Resolution by the tenant was seeking to cancel a One-Month Notice to End Tenancy for Cause.

Both parties were present at the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained. The participants had an opportunity to submit documentary evidence prior to this hearing, and the evidence has been reviewed. The parties were also permitted to present affirmed oral testimony and to make submissions during the hearing. I have considered all of the affirmed testimony and relevant evidence that was properly served.

Preliminary Matter Landlord's Representative

The Respondent landlord was represented by an agent who was apparently unfamiliar to the Applicant tenants, and the tenants challenged this individual's right to act in the capacity of agent or supporter for the landlord.

Rule 8.3 of the Residential Tenancy Branch Rules of Procedure states that a party to a dispute resolution proceeding may be represented by an agent or a lawyer and may be assisted by an advocate, an interpreter, or any other person whose assistance the party requires in order to make his or her presentation.

I find that either party is at liberty to be accompanied, supported or represented by a person of their own choosing and the tenant's objection was found not to be valid.

Preliminary Matter Tenant or Occupant

The tenant's application had included three individuals named as co-tenant/applicants. However, there were only two names documented on the tenancy agreement as the co-tenants. The third Applicant named on the Style of

Cause was not shown on the tenancy agreement and it was established that this individual had no relationship to the landlord. The third individual was apparently paying rent to one of the original co-tenants and resided temporarily in the rental unit with the other two occupants.

Given the above, it was determined that the hearing would only proceed to deal with the dispute between the two co-tenant/applicants who signed the tenancy agreement and the landlord and would not involve the third person, who was found not to be a tenant, but an occupant. The tenant's application was therefore amended to disregard the third applicant wrongfully identified as a party to this dispute. In any case, the third applicant has since vacated the rental unit.

Issue(s) to be Decided

Should the One-Month Notice to End Tenancy be cancelled?

Background and Evidence

A copy of the tenancy agreement, copies of communications and copies of photos were in evidence. However, neither party had submitted a copy of the One-Month Notice to End Tenancy for Cause into evidence.

The tenancy with these two co-tenants, began in August 2008. The landlord testified that the tenant had permitted an additional occupant to reside in the rental suite without written permission from the landlord, in violation of a term in the tenancy agreement. A copy of the agreement confirmed that the tenant was not permitted to add additional occupants without the landlord giving written consent.

The tenant testified that this individual was only there for a temporary period and was not a permanent resident. The tenant testified that the third occupant has now vacated.

The landlord gave testimony that the tenant had also violated the agreement by allowing clutter to accumulate on their balcony. The landlord made reference to photos showing the unacceptable state of the balcony.

The tenant stated that this situation has since been rectified and they understand that this will not be tolerated.

Analysis

Section 58 of the Act provides that, except as restricted under this Act, a person may make an application for dispute resolution in relation to a dispute with the person's landlord or tenant in respect of any of the following:

- (a) rights, obligations and prohibitions under this Act;
- (b) rights and obligations under the terms of a tenancy agreement that
 - (i) are required or prohibited under this Act, or
 - (ii) relate to the tenant's use, occupation or maintenance of the rental unit, or the use of common areas or services or facilities.

Section 6 of the Act also states that the rights, obligations and prohibitions are enforceable between a landlord and tenant under a tenancy agreement and either party has the right to make an application for dispute resolution if they cannot resolve a dispute over the terms of their tenancy agreement. (My emphasis)

I find that the tenancy agreement signed by these parties contains a term limiting permanent occupants to those who signed the tenancy agreement , and requiring the landlord's permission in writing before allowing additional co-tenants to move in.

I find that this term is a valid and enforceable tenancy term agreed-upon by both the landlord and the tenants.

In regard to the situation of clutter on the balcony, I find that section 32 of the Act imposes responsibilities on the tenant for the care and condition of a rental unit. A tenant must maintain reasonable health, cleanliness and sanitary standards throughout the rental unit and the other residential property to which the tenant has access.

I find that this includes keeping the balcony free of unsightly clutter and an obligation not to utilize this space for storage of items.

I find that the tenant did violate the agreement and Act by permitting an extra occupant to reside in the rental suite and by keeping items on the balcony. However, I find that the tenant has satisfactorily rectified both of these transgressions.

While I find that there were genuine violations of the Act and agreement, I do not find them to be significant enough to terminate this tenancy at this time. Accordingly, I find that the One-Month Notice to End Tenancy for Cause must be cancelled.

However, in cancelling this Notice, I hereby caution the tenants that this decision will serve as a final warning not to violate the Act or their agreement. The tenant is now aware that any future recurrence of the above violations or other contraventions of the Act or agreement could be considered as a valid basis to justify issuing another Notice to terminate tenancy for cause under section 47 of the Act.

Based on the above, I hereby order that the One-Month Notice to End Tenancy be cancelled and of no force nor effect.

Conclusion

The tenant is successful in the application. The One-Month Notice to End Tenancy for Cause is cancelled with a warning for the tenant not to repeat the transgressions.

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: September 16, 2013

Residential Tenancy Branch

