



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, MNDC, OLC, FF

Introduction

This hearing dealt with the Tenant's Application for Dispute Resolution, seeking an order to cancel a one month Notice to End Tenancy, for a monetary order for money owed or compensation under the Act or tenancy agreement, for an order for the Landlord to comply with the Act and to recover the filing fee for the Application.

Both parties appeared at the hearing. The hearing process was explained and the participants were asked if they had any questions. Both parties provided affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions to me.

I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure; however, I refer to only the relevant facts and issues in this decision.

Preliminary Issues

The Tenant has applied for monetary claims against the Landlord and for an order for the Landlord to comply with the Act. I explained to the Tenant that these claims are unrelated to the main issue of possession of the rental unit and therefore, pursuant to section 2.3 of the rules of procedure, I dismiss these unrelated claims with leave to reapply.

Issue(s) to be Decided

Should the Notice to End Tenancy be cancelled?

Background and Evidence

This tenancy began several years ago, apparently in 1998. The parties have been involved in a prior dispute resolution hearing.

On January 4, 2011, the Tenant signed a new tenancy agreement with the Landlord. Water and garbage collection are included in the rent of \$840.00 per month. The Tenant

is the only person named in the tenancy agreement with permission to live in the rental unit. The parties used the standard form tenancy agreement, which includes a provision that the Tenant may assign or sublet the rental unit with the written consent of the Landlord.

According to the evidence of both parties, prior to this new tenancy agreement being entered into, there were additional occupants at the rental unit which the Landlord was aware of.

The Landlord testified that at the time of signing the current tenancy agreement only the Tenant was living in the rental unit. The Tenant acknowledged that around this time the prior roommates of the Tenant, or other occupants at the rental unit, had moved out and he was living there alone.

The Landlord testified that recently he would see the same cars parked at the rental unit on an ongoing basis. The Landlord testified he drives by the rental unit frequently and saw these cars there throughout the day and also at night.

Due to the number of vehicles there on an ongoing basis, the Landlord checked his water bill for the rental unit and found out that it had doubled. The Landlord requested an inspection of the rental unit as he was concerned there may be water running unnecessarily. When the Landlord attended the rental unit he noticed there was furniture in the upper portion of the rental unit which did not belong to the Tenant. The Landlord testified that the Tenant usually lived in the lower portion of the rental unit property. The Landlord went into the bathroom on the upper floor and noticed hair dryers in the upper bathroom, and other indications there was more than one person occupying the rental unit.

The Landlord further testified that his spouse had been to the rental unit and smelled marijuana coming from the rental unit while the Tenant was at home. The Landlord also witnessed a dog at the rental unit, a dog house and a dog blanket inside the rental unit. The Landlord testified he did not agree to allow a pet at the rental unit under the new tenancy agreement. The Landlord was also concerned because he alleges the Tenant has become more confrontational and has begun videotaping and recording the Landlord without the Landlord agreeing to this.

On August 3, 2013, the Landlord wrote a letter to the Tenant setting out that the tenancy agreement only allowed the Tenant to occupy the rental unit and no additional people were allowed without the permission of the Landlord. The Landlord warned the Tenant that he could have the additional people vacate the rental unit or the Tenant would face eviction, or, the Landlord offered a new tenancy agreement to the Tenant to include the additional people residing there.

The Landlord testified he is concerned the Tenant may be letting people live in the rental unit who are involved in the drug trade, or other illegal activity. He testified he is concerned because he does not know these people.

The Tenant wrote back to the Landlord on August 16, 2013, and supplied excerpts of several cases the Tenant had copied from the Residential Tenancy Branch website. The Tenant cites these cases as grounds that he is allowed to have additional occupants in the rental unit because the tenancy agreement does not prohibit this.

The Landlord served the Tenant with the one month Notice to End Tenancy for cause on August 17, 2013. The Landlord is alleging in the Notice the Tenant has assigned or sublet the rental unit without the written permission of the Landlord.

The Tenant submitted in evidence several pages of explanation as to why he was requesting a monetary order. As explained above, these points were not relevant to the main issue in this case.

The Tenant also sets out several cases that held that a landlord could not prevent a renter from having additional occupants unless there was a clause in the tenancy agreement.

The Tenant submitted receipts for rent payments issued in 1998 to 2000, which name the Tenant and "et al" as recipients of the receipt and had had paid rent.

The Tenant testified and submitted that in a case between the parties conducted in 2010, the Landlord agreed he could not prevent the Tenant from having someone, such as the Tenant's mother, move into the rental unit with the Tenant.

The Tenant acknowledged he currently has his girlfriend living at the rental unit with him and they have a dog. The Tenant testified that the Landlord had allowed a dog at the rental unit in the past. The tenancy agreement sets out that no pet damage deposit was required as it was not applicable. The Tenant did not have the Landlord's permission for a pet.

The Tenant acknowledged the Landlord refused to allow him additional occupants at the rental unit unless the Tenant provided the Landlord with their personal information. The Tenant acknowledged the Landlord had not been supplied with this information.

The Tenant testified he did not think the tenancy agreement he signed on January 4, 2011, changed the terms of the tenancy. He thought there would be no change in the previous method of working with the Landlord.

The Tenant also testified that his girlfriend could be considered a guest as the Act does not restrict or put a limit on how long guests can stay in a rental unit.

Analysis

Based on the above, the evidence and testimony, and on a balance of probabilities, **I find the Application for Dispute Resolution of the Tenant must be dismissed, as I find the Notice to End Tenancy is valid and should not be cancelled.**

I explained to the Tenant that section 9 of the tenancy agreement between the parties required the Tenant to have the prior written permission of the Landlord to sublet. I find the Tenant has allowed portions of the rental unit to be occupied by at least one additional occupant, who is not on the tenancy agreement. I find the Tenant has sublet portions of the rental unit without the prior written consent of the Landlord, and has therefore breached the tenancy agreement.

The cases the Tenant cited in support of his arguments may all be distinguished from this case, as those cases involved situations where there was no written tenancy agreement or no clauses dealing with subletting or additional occupants.

I also explained to the Tenant there were other decisions made where the renter occupying a rental unit had been found to sublet portions of the rental unit to roommates, or other people, even though the renter did not vacate the rental unit. I explained these determinations are made on a case by case basis.

In this case the tenancy agreement between the parties requires the Tenant to obtain written permission from the Landlord prior to subletting. It is clear from the evidence before me the Tenant did not have permission from the Landlord to sublet.

Although they may have had different arrangements in the past, I found that the current tenancy agreement is a valid and binding contract between the parties. I find there was no agreement made in the tenancy agreement, or after it was entered into, that the Tenant could have additional people occupy the rental unit with him. I find there was no "grandfathering" clause here, or any other type of agreement between the parties that the Tenant would continue to be able to sublet portions of the rental unit to other people without getting the written permission of the Landlord. Here the parties entered into a new tenancy agreement that specifically required written permission from the Landlord and therefore, new terms applied to this tenancy. The Tenant is not able to rely on past arrangements or past statements of the Landlord to justify his current situation with a new tenancy agreement.

Therefore, I find the Tenant has breached the tenancy agreement by subletting without the written consent of the Landlord. This leads me to find the Notice to End Tenancy is valid and should not be cancelled. I dismiss the portion of the Application of the Tenant dealing with the Notice and possession of the rental unit without leave to reapply. The Tenant has leave to reapply for the monetary claims, as explained above.

The effective date of the Notice to End Tenancy corrected under the Act to September 30, 2013. However, as the Tenant has paid rent until the end of October 2013, the Landlord allowed the Tenant to remain in the rental unit until October 31, 2013. Under the Act and tenancy agreement, and with the consent of the Landlord, the Tenant must vacate the rental unit before **1:00 p.m. on October 31, 2013.**

The Landlord may make his own Application for Dispute Resolution for an order of possession if the Tenant does not vacate.

Conclusion

The Application of the Tenant to cancel the Notice to End Tenancy is dismissed without leave, as I find the Notice to End Tenancy is valid and should not be cancelled. The monetary claims of the Tenant are dismissed with leave to reapply.

The Landlord has agreed the Tenant has until 1:00 p.m. October 31, 2013, to vacate the rental unit. The Landlord may also apply for an order of possession for the rental unit.

This decision is final and binding on the parties, unless otherwise provided under the Act, and is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the Act.

Dated: October 15, 2013

Residential Tenancy Branch

