



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPC, OPB, CNC, FF

Introduction

This hearing dealt with an application by the tenant for an order setting aside a notice to end this tenancy and a cross-application by the landlord for an order of possession. Both parties participated in the conference call hearing.

Issues to be Decided

Should the notice to end tenancy be set aside?
Is the landlord entitled to an order of possession?

Background and Evidence

This tenancy began on May 15, 2013 at which time the parties signed a tenancy agreement with the following provision:

One additional person (girlfriend) for 50 dollars
Parents (both father & mother) for 50 dollars
But cumulative calculation
No other move-in long term partner

On or about October 8, the landlord served on the tenant a one month notice to end tenancy for cause which alleges that the tenant has an unreasonable number of occupants in the unit and that the tenant has breached a material term of the tenancy. The parties agreed that the tenant's parents moved into the rental unit with him at the beginning of the tenancy and the tenant confirmed that they intend to stay with him until he vacates the rental unit.

The landlord took the position that when the parties were negotiating the tenancy agreement, the tenant said that his parents would only stay for 3 months. She

explained that this is why she referred to a “cumulative calculation,” because she expected that his parents would only reside in the unit short term.

The landlord stated that the rental unit has just one bedroom and is too small to accommodate more than 2 people. She expressed concern that the tenant’s parents must be sleeping in the living room and said that because the living room is connected to the kitchen, it is not proper and not quite safe for anyone to sleep in the living room. When I questioned the landlord about why it was not safe to stay in the living room, she simply repeated several times that it is not safe to sleep close to the kitchen without elaborating as to what the specific risks are.

The tenant testified that the rental unit is 1,000 square feet and that there is adequate room for 3 people. He noted that the tenancy agreement provides for an additional payment to have additional parties in the unit and further argued that the issue of 3 months only arose because that was the amount of time for which he pre-paid to have additional occupants. The tenant stated that the landlord’s difficulty with English led to a misunderstanding.

Analysis

The landlord bears the burden of proving that she has grounds to end the tenancy.

With respect to the first ground, that the tenant has permitted an unreasonable number of occupants to occupy the rental unit, the landlord must prove that the number of occupants is unreasonable. Although the landlord may feel strongly that a 1,000 square foot suite is too small for 3 people, I do not agree. While the unit may be somewhat cramped as there is only one bedroom, I find that 3 occupants in that square footage is not unreasonable. I further find no evidence to show that there is any risk posed to either the occupants or the landlord from sleeping in a room that is adjacent to the kitchen. I therefore find that the landlord has failed to prove that an unreasonable number of occupants are in the unit and I find that this ground for ending the tenancy must fail.

As to the second ground for ending the tenancy, that the tenant has breached a material term of the tenancy agreement, the landlord bears the burden of proving that there is a term in the agreement prohibiting the tenant from having 3 occupants and that the term is material.

The tenancy agreement clearly contemplates that there will be more than one occupant in the rental unit. If the landlord wanted no more than 2 occupants in the unit, it was her responsibility to clearly express in the tenancy agreement that there was a prohibition

against more than 2 occupants. The landlord did not do this. Rather, she contemplated that there would be up to 4 occupants, including the tenant, his girlfriend and both his parents. If the landlord wished to limit the amount of time that the parents could spend in the rental unit, she should have clearly expressed that limit.

I do not accept that the inclusion of the “cumulative calculation” was meant to imply that the parents could only spend a short amount of time in the unit. Rather, it appears to be a contemplation that the parents or girlfriend may only stay part of a month and a mechanism by which the landlord could add up the time spent in the unit by the additional occupants and collect additional monies.

The doctrine of *contra proferentem* is a contractual principle which states that when a term of a contract is unclear, it is interpreted against the person who drafted the contract. In this case, the landlord drafted the contract and I find that the term respecting additional occupants is unclear and therefore must be interpreted in a way that favours the tenant. I find that the tenant may have his girlfriend and/or parents reside in the unit provided that he pays the additional required sum.

I find that the landlord has failed to prove that the tenant has failed to comply with a material term of the tenancy.

Conclusion

I order that the notice to end tenancy dated October 7, 2013 be set aside and of no force or effect. As a result, this tenancy will continue. The landlord’s application is dismissed in its entirety.

As the tenant has been successful in his claim, I find that he should recover the fee paid to bring his application. The tenant may deduct \$50.00 from a future rental payment.

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: October 28, 2013

