



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Re/Max Check Realty
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 landlord and tenant participated in the teleconference hearing and gave affirmed evidence. The tenant was accompanied by an advocate.

Issue(s) to be Decided

Should the notice to end tenancy be cancelled?

Background and Evidence

The parties agree the tenancy started August 1, 2011 and the tenant was initially obligated to pay \$580.00 rent per month payable in advance on the first day of the month.

The landlord gave evidence that she served a Notice to End Tenancy for Cause (the "Notice") on the tenant on December 27, 2013 by posting the Notice on the tenant's door. Section 90 of the Act provides that because the Notice was served by posting it on the tenant's door, the tenant is deemed to have received the Notice three days later on December 30, 2013.

The Notice specifies an effective date of January 31, 2013 and specifies the following reason for the Notice:

- Tenant has allowed an unreasonable number of occupants in the unit/site

The landlord gave evidence that the rental unit is a bachelor suite of less than 400 square feet. The rent includes heat and hydro. The landlord gave evidence that the

tenant's daughter and daughter's boyfriend have been living in the rental unit since sometime in November 2013.

The landlord gave evidence that the building owner spoke to the tenant on approximately November 14, 2013, and the tenant told him the two guests would be leaving on November 17, 2013.

The landlord gave evidence that the building owner heard from other tenants that the tenant's daughter and her boyfriend continued to occupy the rental unit after November 17, 2013. The property manager drew up a Notice to end Tenancy for Cause based on an unreasonable number of occupants, then spoke to the tenant on November 28, 2013. The landlord's evidence is that the tenant told the property manager that his daughter and her boyfriend had moved out. For that reason, the building owner decided to not serve the tenant with the earlier notice to end tenancy.

The landlord gave evidence that the building owner heard from other tenants that the tenant's daughter and her boyfriend continued to occupy the rental unit after November 28, 2013. For that reason, the landlord gave the tenant a caution notice (the "Caution Notice") on December 10, 2013. A copy of the Caution Notice was put into evidence; it reads:

It has been reported to us that your daughter and her friend are back staying at your residence. You had been cautioned by the owner last month that they are staying for unreasonable amounts of time. There is an unreasonable number of people staying in this bachelor suite. This must be corrected or we will have no other choice than to issue an eviction notice.

The landlord gave evidence of events after December 27, 2013 but I cannot consider events that occurred after the Notice was served.

The tenant's advocate said the tenant does not dispute that his daughter and her boyfriend stayed with him off and on while they did not have their own place. The tenant's evidence is that at the time of the hearing, his daughter and her boyfriend were residing in their own rental unit. The tenant's evidence is that they started staying with him just before his daughter's birthday which is November 17th. Asked if they stayed with him continuously from November 17 until December 27, the tenant said they would stay with him for about a week, then stay somewhere else, and then come back to stay with him again.

Asked if the building owner spoke to him on November 14, 2013, the tenant did not remember. Asked if the property manager spoke to him on November 28, 2013, the tenant said she had. Asked if he told the property manager on November 28, 2013 that his guests had left, the tenant was not sure.

Asked what he would do if his daughter was again without a place to live, the tenant said it was a difficult question.

The tenant's advocate gave evidence that the tenant was trying to get his daughter and her boyfriend to leave, since he was aware that his own tenancy was in jeopardy, however the daughter's boyfriend has a strong personality.

The landlord noted that the tenant said in his application that his daughter arrived on November 1, 2013, rather than shortly before November 17, 2013 as he said at the hearing.

Analysis

Where a landlord seeks to end a tenancy for cause, the onus is on the landlord to demonstrate that cause exists. In this case, the cause to be proven is whether the tenant allowed an unreasonable number of occupants in this rental unit.

I find that the tenant did have two other people occupying his rental unit for periods of time of at least a week from at least shortly before November 17, 2013 until at least December 27, 2013. I accept the tenant's evidence that the other people occupied his suite intermittently rather than continuously.

I agree with the landlord that three adults is an unreasonable number of occupants for a bachelor suite of less than 400 square feet. I also accept the landlord's evidence regarding the dates and content of the discussions between the building owner and property manager and the tenant.

Although the additional two people did not stay continuously during November and December 2013, they did return to stay with the tenant after the building owner and property manager had each advised the tenant that they did not wish the additional people to occupy the rental unit. This suggests to me that the tenant was unwilling or unable to prevent the additional two people from occupying his suite after at least two warnings from his landlord. I also find it troubling that tenant did not sound as though he was willing to prevent the additional people from occupying his suite in future if they again had no place of their own.

For these reasons, I find that the landlord has shown cause to end the tenancy. I dismiss the tenant's application to cancel the Notice.

Conclusion

The tenant's application is dismissed.

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: February 27, 2014

Residential Tenancy Branch

