



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Lookout Emergency Aid Society
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC

Introduction

This hearing was convened in response to an application by the Tenant pursuant to the *Residential Tenancy Act* (the "Act") for Orders as follows:

1. An Order Cancelling a Notice to End Tenancy - Section 47.

The Tenant and Landlord were each given full opportunity to be heard, to present evidence and to make submissions.

Issue(s) to be Decided

Is the notice to end tenancy valid?

Is the Tenant entitled to a cancellation of the notice to end tenancy?

Background and Evidence

The tenancy started in January 2012. Rent of \$375.00 is payable monthly on the first day of each month. On February 1, 2014 the Landlord posted a one month notice to end tenancy for cause (the "Notice") on the Tenant's door. The Notice contains the following reasons:

- The tenant or a person permitted on the property by the tenant has:
 - Put the landlord's property at significant risk.
- The tenant has engaged in illegal activity; and
- The Tenant has assigned or sublet the unit.

The Landlord states that they have no evidence of illegal activity or sublet or assignment. The Landlord states that the Tenant has provided his fob and allowed his adult child and partner to stay in the unit contrary to the terms of the tenancy agreement in relation to visitors, guests and occupants. The Landlord provided justifications for the restrictions. The Landlord states that these two persons had conflicts between them creating a disturbance and that the Landlord received noise complaints. The Landlord states that these persons had stayed at the unit for a few days before being discovered and that they were then asked to leave the unit. The Landlord states that these persons were in the unit without the presence of the Tenant for approximately a week over the New Year. The Landlord states that they have no written complaints from the other tenants as their tenants are afraid to come forward out of fear of retaliation. The Landlord states that the occupancy of these persons puts the building at risk. The Landlord states that the unauthorized use of the unit must be restricted and otherwise such entries raise the incidents of drug dealing, conflict and violence. The Landlord

states that some other tenants act in this manner regardless of such unauthorized use. The Landlord states that restrictions contained in the tenancy agreement are reasonable restrictions given the location and type of tenants in the building. The Landlord states that three people made noise complaints over the New Year and that the building is crazy over the New Year and can be a scary place. The Landlord states that the persons in the Tenant's unit are at risk themselves just by virtue of being in the building.

The Tenant denies allowing his adult child into the unit and denies that their presence has caused any risk to the landlord's property. The Witness, the Tenant's adult child, states that they had nowhere to stay, were trying to locate the Tenant and were given access to the Tenant's unit by the Landlord's front desk staff who also continued to allow them into the building during visitor hours.

Analysis

Where a Notice to End Tenancy comes under dispute, the landlord has the burden to prove, on a balance of probabilities, that the tenancy should end for the reason or reasons indicated on the Notice and that at least one reason must constitute sufficient cause for the Notice to be valid. Without commenting on the reasonableness of the Landlord's restrictions on guests, visitors or occupants and without determining how the Tenant's adult child gained access to the unit, given the evidence that the presence of these persons caused only a couple of noise complaints, and considering that it took the Landlord a few days to notice these persons' presence in the building, I find that the Landlord has failed to establish that their presence put the landlord's property at any risk. It appears that the issue is more in relation to the Tenant's breach of the tenancy agreement which is not a reason provided in the Notice. As a result, I find that the Notice is not valid and that the Tenant is entitled to a cancellation of the Notice.

Conclusion

The Notice is cancelled and the tenancy continues.

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: April 02, 2014

Residential Tenancy Branch

