



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, OP

Introduction

This hearing dealt with an application by the tenant to cancel a notice to end tenancy for cause.

Both the landlord and tenant attended the teleconference hearing and gave affirmed evidence.

Issue(s) to be Decided

Should the notice to end tenancy be cancelled?

Background and Evidence

The landlord gave evidence that he served the tenant with a Notice to End Tenancy for Cause (the "Notice") by leaving it with the tenant's adult son on the premises on April 28, 2014. The Notice specifies an effective date of May 31, 2014 and provides the following reasons for ending the tenancy:

- Tenant has allowed an unreasonable number of occupants in the unit/site
- Tenant has assigned or sublet the rental unit/site without the landlord's written consent
- Security or pet deposit was not paid within 30 days as required by the tenancy agreement

The parties agree that the tenancy agreement was not reduced to writing. The parties differ in their evidence about what agreements were made between them verbally prior to the start of the tenancy.

Unreasonable number of occupants:

The landlord gave evidence that the tenant's adult son moved into the rental unit around April 1, 2014. The landlord's home is on the same property as the rental unit, although he does not have a clear view of the rental unit from his home. The landlord gave evidence that he saw the tenant's son around the property and could hear his music playing during the day. The landlord also gave evidence that he saw a day bed being moved into the rental unit around that time.

The landlord gave evidence that the rental unit has two bedrooms, and the tenancy was for the tenant and her daughter. The landlord's evidence is that he and the tenant had a conversation about this and agreed there would be no other occupants and no overnight visitors. His evidence is that the rental unit is a small apartment and the tenant has two large dogs. Also, the rental unit has a well system and a septic tank so there are capacity issues. The landlord's evidence is that this conversation took place when the tenant first stopped by to look at the rental unit. The landlord did not remember when the tenant moved in, but thought it might have been in August 2013.

The landlord's position is that there was a verbal agreement regarding the number of people who would occupy the rental unit. The landlord gave evidence that he spoke to the tenant in approximately mid-April and the tenant told him that she had just had a visitor over to use the shower because the visitor's bathroom was being renovated. The landlord says the tenant's son approached him about a week later and told the landlord that he was staying there and helping his mother with the rent. The tenant's son told him that he would leave when he got a job.

The landlord said he was not certain whether the tenant's son was still living at the rental unit at the time of the hearing, however he sees him a lot. He saw the tenant's son on the premises the Sunday prior to the hearing.

The tenant gave evidence that there was no verbal agreement regarding the number of occupants in the rental unit or whether she could have overnight guests. The tenant's evidence is that she came to view the rental property on a Friday in June 2013. She was interested in the rental unit and came back that same evening so the landlord could meet her daughter and her two dogs. She says the landlord told her she had to pay the first month's rent and a damage deposit. That same day, she gave him \$900.00 cash which was intended to be one month's rent of \$850.00 and \$50.00 toward the damage deposit. She moved in a few days before July 1, 2013 and gave the landlord an additional \$375.00 the day she moved in, for the balance of the \$425.00 damage deposit.

The tenant also gave evidence that her son did not move in with her. The tenant gave evidence that her son was released from jail in Victoria on April 11, 2014 and she picked him up and told him he could stay with her for two weeks. The tenant's evidence is that her son only stayed with her for one week, and left on April 18, 2014 after she and the landlord had a dispute and the landlord turned off power to the rental unit. The tenant also says that she did not move a day bed into the rental unit.

The tenant's evidence is that her son went to his brother's home and has been staying with either his brother or friends since. She gave evidence that her son has stayed overnight with her about three times since then and has no personal belongings at the rental unit. She says that on April 17th the landlord gave her 24 hour notice to inspect the rental unit on April 18th. She invited the landlord to come inside the rental unit at the time he gave her the notice, but the landlord declined. She requested the landlord come at a later time on April 18th than the time specified on the notice and that led to their dispute the next day.

The tenant's evidence is that her son has not contributed any money toward her rent. Her evidence is that she told her son she did not have enough room for him. The tenant states that a friend did come to the rental unit to use the shower during renovations of the friend's home.

Pet Deposit:

The tenant put a copy of a document into evidence, which is an undated letter from the landlord to the Ministry of Social Development (the "Ministry") stating:

To Whom it May Concern, I [Landlord name] (Landlord)
will be renting upstairs apt to [Tenant name] and [Tenant's daughter name] and 2
dogs @ [Address]
Rent \$850.00
Damage Deposit 425.00
Pet Damage ?

The letter is date-stamped September 23, 2013 however the tenant states she handed it in a few days before that.

The landlord gave evidence that he put a question mark beside "Pet Damage" because he wasn't sure what to charge for a pet deposit. The landlord states he had a conversation with the tenant when she viewed the rental unit, and told her that she

would have to pay a pet damage deposit and he would need to see the dogs. He says that, at the time, he did not know how much to ask for a pet deposit.

The landlord gave evidence that he specified the amount of the pet deposit before the tenant moved in. However, the tenant did not have enough money at the time, so he agreed to give her a couple of months to come up with the money. He does not recall if there was any fixed deadline. The landlord's evidence is that the tenant did not pay the pet deposit.

The tenant gave evidence that the landlord did not say anything about a pet deposit at the time she viewed the rental unit. He did ask to see her dogs, and she brought them by later that day. The tenant's evidence is that the landlord wondered if the Ministry would pay a pet deposit for the tenant. Her understanding is that he wanted a pet deposit if the Ministry would pay one, but did not require one otherwise.

The tenant gave evidence that the Ministry provided a cheque for \$425.00 payable to the landlord on about September 27, 2013 for a security deposit (following receipt of the above-noted letter from the landlord). The tenant had already paid the landlord a security deposit, and so the landlord refunded \$420.00 from the Ministry's cheque to the tenant. The tenant states that it would not make sense for the landlord to refund her \$420.00 if the landlord was expecting payment of a \$425.00 pet deposit.

The landlord agrees that he refunded the tenant \$420.00 from the Ministry's \$425.00 cheque however he states he did so because the tenant needed the money.

Analysis

When a landlord issues a notice to end tenancy for cause and the notice is disputed by the tenant, the onus is on the landlord to prove one or more of the specified causes on a balance of probabilities. Here, the landlord has specified three causes for ending the tenancy. If the landlord proves at least one of those causes, the Notice will not be cancelled. However, if the landlord does not prove any of the specified causes, then I must cancel the Notice.

Unreasonable number of occupants – I find the landlord has not proven, on a balance of probabilities, that the parties verbally agreed that the tenancy would be limited to two occupants. I found the tenant's memory of initially viewing the property and discussing the prospective tenancy was more precise and detailed than the landlord's memory. The tenant remembered the day and time of day of their meeting, while the landlord was

not certain which month it was. For that reason, I prefer the evidence of the tenant that the parties did not discuss a limit on the number of occupants to the rental unit.

Since it was not a term of the tenancy agreement, the landlord must prove both that the tenant's son was occupying the rental unit and that three persons was an unreasonable number given all the relevant circumstances. I find that the landlord has not established that the tenant's son was doing more than staying briefly with his mother following his release from jail. I accept the tenant's evidence that her son was released from jail on April 11, 2014. I also accept the evidence of the landlord that the tenant's son told him he was staying with his mother to help with rent and would move when he got a job. That may have been the tenant's son's intention, but I accept the tenant's evidence that she did not intend to allow her son to stay more than about two weeks.

I accept that the rental unit is small and connected to a well system and septic tank. However, it does not seem unreasonable that the tenant should have occasional overnight visitors or a short-term visitor. For that reason, I find the landlord has not established that the tenant permitted an unreasonable number of occupants in the unit.

Assignment or Sublet – I find the tenant did not assign her tenancy or sublet any part of the rental unit to her son. I accept the evidence of the tenant that her son did not contribute any money toward rent.

Pet damage deposit not paid within 30 days – I accept the landlord's evidence that he wished to collect a pet deposit, based on his notation on the letter to the Ministry. However, I also find that the landlord did not have a set amount in mind, based on the question mark he put beside the words "pet damage" on the letter. I find the parties did not establish an amount or due date for a pet deposit when they entered into the tenancy. For that reason, it cannot be said that the tenant failed to pay a pet deposit within 30 days as required by the tenancy agreement.

The landlord has not proven any of the three specified reasons for ending the tenancy. The Notice is therefore cancelled.

Conclusion

The notice to end tenancy is cancelled.

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: June 04, 2014

Residential Tenancy Branch

