



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, FF

Introduction

The tenants apply to cancel a one month Notice to End Tenancy dated June 2, 2014. The Notice alleges a variety of grounds: the tenant has allowed an unreasonable number of occupants in the rental unit, that he or a person permitted on the property has significantly interfered with or unreasonably disturbed her, that the tenant has engaged in illegal activity that has, or is likely to adversely affect the quiet enjoyment, security, safety or physical well-being of the landlord or that has jeopardized the lawful right or interest of the landlord, that the tenant has breached a material term of the tenancy agreement and not corrected it within a reasonable time after being given written notice to do so and finally, that the tenant has assigned or sublet the rental unit without the landlord's consent.

Substantiation of any one of these grounds is good cause for eviction under s. 47 of the *Residential Tenancy Act* (the "Act").

The evidence submitted relates to only two of these grounds; whether the tenant has an unreasonable number of occupants in the rental unit and whether "Phil" one of the tenant's guests has significantly interfered with the landlord or unreasonably disturbed her.

Issue(s) to be Decided

Does the relevant evidence presented at hearing show on a balance of probabilities that the tenant has committed or permitted conduct warranting eviction on either of these grounds?

Background and Evidence

The rental unit is a two bedroom townhouse-style apartment in a four-plex building. The tenancy started in November 2013 on a month to month basis. The rent is \$1050.00 and the landlord holds a \$525.00 security deposit.

It appears there is a written tenancy agreement showing that only the applicant Mr. E.S. is a tenant. The other applicant Mr. F.B. is what the landlord describes as a "legal occupant."

The landlord testified that the tenant has permitted another person, "Phil," to occupy the premises as well and that is too many people. She says there is no particular clause in the tenancy agreement restricting the number of occupant but says there is an understanding with the tenant that guest cannot stay past two weeks.

The landlord testified that Paul had overstayed his two weeks. She says there appears to be a lot of people there. She saw someone removing three mattresses. The tenant and the co-applicant testified that Paul did not overstay but is just there a lot and stays late into the evening. They deny there are a lot of people staying there. Mr. F.B. says the mattresses were all his.

The landlord says that on May 25th Phil "berated" her and then on June 2nd Phil confronted her when she came to the door, calling her names and threatening that he should "kill all white people." She says he raised his arms to her in an aggressive manner. She called her husband over and she says Phil berated him too and spat on him, though she did not personally see him spit on her husband.

The applicant F.B. testified that he was there on June 2. He says it is the landlord who is consistently loud, rude and bossy. He says that she was loud and rude to Phil and him that day. He says the landlord was shouting and swearing and that Phil did raise his arms but only as an expression of frustration; not aggressively.

The landlord responded that the tenant's evidence was a mishmash of lies.

Analysis

The ending of a tenancy is a very serious matter. While the burden of proof on a landlord to show just cause is measured on a "balance of probabilities," the nature of the evidence must be substantive.

On the competing evidence, the landlord has failed to establish that Phil is living there and not just a visiting frequently.

In regard to Phil's conduct, the landlord would have been well served by testimony of her husband and of some person or persons from the two work crews who the landlord

claims were witness to the June 2nd incident. Without some corroboration I am left with the competing evidence of the landlord and Mr. F.B. about what happened on that day. I am not able to determine why one should be more credible than the other. The landlord has therefore failed to prove the eviction Notice was justified.

Conclusion

The application is allowed. The Notice to End Tenancy dated June 2, 2014 is hereby set aside. As the tenant E.S. has been successful I authorize him to recover the \$50.00 filing fee by reducing his next rent by \$50.00 in full satisfaction.

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: August 05, 2014

Residential Tenancy Branch

