



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Helping Spiriti Lodge
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC, MNDC

Introduction

This hearing dealt with an application by the tenant seeking to have a One Month Notice to End Tenancy for Cause set aside and for a monetary order for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement. Both parties participated in the conference call hearing. Both parties gave affirmed evidence.

Issues to be Decided

Is the tenant entitled to any of the above under the Act, regulation or tenancy agreement?

Background and Evidence

The tenancy began sometime in 2002. Rent in the amount of \$823.00 is payable in advance on the first day of each month. At the outset of the tenancy the landlord collected from the tenant a security deposit in the amount of \$325.00. The tenant receives a subsidy of \$200.00 a month to help pay the rent.

The landlord gave the following testimony:

The landlords stated that the tenants' son R.M. lives in the suite without the landlords' permission and in contravention of the National Occupancy Standards. The landlord stated that in addition to having an unauthorized occupant in the unit the tenants' son has had several confrontations with staff and refuses to abide by the rules of the complex. The landlord stated that R.M. is argumentative and confrontational. The landlord stated that one verbal and one written warning were provided to the tenant. The landlord stated that they issued a One Month Notice to End Tenancy for Cause on July 24, 2014 with an effective date of August 31, 2014 based on these two grounds.

The landlord stated that they have not had communication with the tenant or her son since that date.

The tenants gave the following testimony:

The tenant stated that her son R.M. provides many services to her due to her age (80 years old) and declining health. The tenant stated that her son does not live there and that she chooses not to seek the services of a third party while her son is willing and capable. The tenants' sons also gave testimony echoing his mothers' statements. R.M. stated that he attends to check up on his mother and for a time slept there as she was fearful of some medical issues. R.M. stated that is no longer the case and that he doesn't stay over as often as he used to.

Analysis

When a landlord issues a notice under Section 47 of the Act, they must provide sufficient evidence to support their issuance of the notice. The landlords have issued the notice on the basis that: the tenant has allowed an unreasonable amount of occupants in the unit/site and that the tenant or person permitted on the property by the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord.

On both grounds the landlord has failed to provide sufficient documentation to support their claim. As for having too many occupants, it was not made clear by the landlord if the tenant is subject to the most current rules of the complex as she was "grandfathered" in when they purchased the property and that they have not provided sufficient evidence proving that R.M. is indeed living in the unit. As for the tenants son being a disturbance; the staff member who is still employed did not attend the conference nor did they provide detailed written statements. On both grounds there isn't sufficient evidence to uphold the notice. In the landlords own testimony they stated that since the notice was issued two months ago there has not been any further issues with the tenant or her son.

The Notice is hereby set aside.

As for the tenants' monetary claim:

When a party makes a claim for damage or loss the burden of proof lies with the applicant to establish their claim. To prove a loss the applicant must satisfy the following four elements:

1. Proof that the damage or loss exists,
2. Proof that the damage or loss occurred due to the actions or neglect of the other party in violation of the Act, Regulation or tenancy agreement,
3. Proof of the actual amount required to compensate for the claimed loss or to repair the damage, and
4. Proof that the applicant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage being claimed.

The tenants failed to meet all four grounds as required. In fact, the tenants did not meet any of the grounds required. The tenants did not provide any evidence to support their position and based on the insufficient evidence I dismiss this portion of their application.

Conclusion

The One Month Notice to End Tenancy for Cause dated July 24, 2014 with an effective date of August 31, 2014 is hereby set aside, it is of no effect or force. The tenancy continues.

The tenants claim for monetary compensation is dismissed in its entirety.

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: September 25, 2014

Residential Tenancy Branch

