



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

CNC, MNDC, OPC, DRI, LRE, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the tenant to cancel a One-Month Notice issued by the landlord. In addition to the above, the tenant's application indicates that the tenant is disputing an additional rent increase and seeking to restrict the landlord's access.

The hearing is also convened to hear the landlord's application seeking an Order of Possession based on the One-Month Notice to End Tenancy for Cause that had been issued on July 11, 2014. The landlord is also claiming unpaid rent pursuant to a verbal agreement that the rent would increase once the tenant added an approved roommate to the tenancy.

Both parties were present at the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained. The participants had an opportunity to submit documentary evidence prior to this hearing, and the evidence has been reviewed. The parties were also permitted to present affirmed oral testimony and to make submissions during the hearing. I have considered all of the affirmed testimony and relevant evidence that was properly served.

Neither party raised any issues regarding service of the application or evidence. I have reviewed all testimony and other evidence. However, only evidence relevant to the issues and findings in this matter are referenced in this decision.

Issue(s) to be Decided

- Should the One Month Notice to End Tenancy for Cause be cancelled or is the landlord entitled to an Order of Possession based on the Notice?

- Has the tenant been required to pay a noncompliant rent increase not allowed under the Act or agreement?
- Is the landlord entitled to payment of higher rent based on the additional occupant or roommate?
- Should an order be granted restricting the landlord's access?

Background and Evidence

Submitted into evidence was, a copy of the One Month Notice to End Tenancy for Cause dated July 11, 2014 , indicating that the tenancy is being terminated because:

“Tenant has allowed an unreasonable number of occupants in the unit/suite”

The landlord testified that there was a previous tenancy agreement between the landlord and two co-tenants, one of whom was the applicant tenant in this dispute. The landlord submitted a copy of this previous agreement into evidence.

The landlord testified that the rent for the previous tenancy was set at \$1,500.00 per month. That tenancy was terminated by the landlord.

A new tenancy agreement was signed between the landlord and only the applicant tenant on October 20, 2013. According to the landlord, they agreed that this would be a short-term agreement with rent set at \$1,000.00 per month. A copy of the new tenancy agreement showing the rent as \$1,000.00 is in evidence. The tenancy agreement states that it is for a fixed term that was to end on February or March 2014. Apparently the parties chose to continue the tenancy beyond the expiry date.

According to the landlord, it was verbally agreed that the tenant would seek a new “roommate” to add to the tenancy as a co-tenant, at which time the rent would be increased to \$1,500.00.

The tenant disputed the landlord's version of the above facts and stated that the rent was set at \$1,000.00. The tenant stated that the amount of rent charged under the tenancy agreement is not contingent upon the number of occupant.

The tenant stated that the landlord has no right to increase the rent nor to terminate the tenancy based on the tenant allowing another person to stay on the property.

The landlord testified that, because the tenant has added another occupant without the landlord's consent, the landlord issued a One Month Notice to End Tenancy for Cause to end the tenancy because the tenant has allowed an unreasonable number of

occupants in the unit/suite. The landlord pointed out that the addendum of the tenancy agreement states:

“NO LONG TERM GUESTS”

The tenancy agreement addendum also states:

“TENANT IS TO BE ACTIVELY SEEKING A ROOMMATE WHO IS TO BE APPROVED BY LANDLORD AND WHO WILL BE REQUIRED TO SUBMIT A DAMAGE DEPOSIT OF \$375.00 BEFORE ASSUMING RESIDENCY”

THIS LEASE IS A TEMPORARY SITUATION TO ACCOMMODATE PRESENT TENANT’S PREVIOUS MISFORTUNES”

The landlord is requesting an order of possession due to on violations of the tenancy agreement and based on One Month Notice to End Tenancy for Cause.

Analysis

NOTICE TO END TENANCY

I find that the landlord’s genuine intention was to issue the One-Month Notice to End Tenancy for Cause, based on what the landlord believes are violations by the tenant of terms contained in the tenancy agreement.

However, I find that these two parties agreed to a contract with terms that were not sufficiently clear. I further find that each party has their own interpretation of the applicable tenancy terms.

Section 6(1) states that all of the rights, obligations and prohibitions established under the Act are enforceable between a landlord and tenant under a tenancy agreement and 6(2) states that a landlord or tenant may make an application for dispute resolution if they cannot resolve a dispute.

However section 6(3) of the Act states that a term of a tenancy agreement is **not enforceable** if:

(a) the term is inconsistent with the Act or the regulations,

(b) the term is unconscionable, or

(c) **the term is not expressed in a manner that clearly communicates the rights and obligations under it.** (My emphasis).

Based on the evidence before me I find that the landlord has not provided sufficient evidence to meet the criteria to justify ending the tenancy under section 47 of the Act.

Therefore, I find that the One Month Notice to End Tenancy for Cause dated July 11, 2014 must be cancelled and the landlord's application must be dismissed.

In dismissing the landlord's application I hereby grant the tenant's request to cancel the One Month Notice to End Tenancy for Cause.

LANDLORD'S REQUEST FOR ADDITIONAL RENT OWED

I find that no 10-Day Notice to End Tenancy for Unpaid Rent was ever issued by the landlord which would permit the tenant to dispute the landlord's claim that the rent is in arrears

I find that the landlord's request in the application for a monetary order against the tenant for unpaid rent appears to be based on the landlord's allegation that there was an agreement for higher rent made between the parties depending on the number of occupants.

I find that the rental rate shown in the main body of the tenancy agreement is set at \$1,000.00 and there is no term that specifies that this rate will increase to \$1,500.00 if another occupant resides in the unit.. Although there are other amounts referred to in the addendum of the tenancy agreement, I find that these amounts conflict with the rental rate of \$1,000.00 shown in the main body of the tenancy agreement.

Given the above, I dismiss the landlord's monetary claim for rental arrears.

TENANT'S REQUEST FOR OTHER ORDERS

With respect to the portion of the tenant's application disputing an additional rent increase, I find that a tenant's rent can only be increased in accordance with section 42 or the Act. I find that the tenancy agreement between this landlord and this tenancy agreement has set the tenant's rent at \$1,000.00.

In regard to the portion of the tenant's application requesting an order to suspend or set conditions on the landlord's right to enter the rental unit, I find that the Act already limits a landlord's access under section 29 (1):

A landlord must not enter a rental unit that is subject to a tenancy agreement for any purpose unless the tenant gives permission at the time of the entry or not more than 30 days before the entry or unless the

landlord gives the tenant written notice at least 24 hours and not more than 30 days before the entry.

The Notice that the landlord will be accessing the unit must include the following information:

- (i) the purpose for entering, which must be reasonable;*
- (ii) the date and the time of the entry, which must be between 8 a.m. and 9 p.m. unless the tenant otherwise agrees;*

A landlord may gain entrance if an emergency exists and the entry is necessary to protect life or property and the Act permits a landlord to inspect a rental unit monthly.

Based on the evidence, I hereby grant the tenant's request to cancel the One Month Notice to End Tenancy for Cause, and order that the parties comply with the Act as outlined above in regard to rental increases and the landlord's right to access the unit.

I hereby dismiss the landlord's application in its entirety without leave.

I also order the parties to restrict all communication to written form and refrain from communicating directly, unless impossible at the time.

Each party is responsible for the cost of their own applications.

Conclusion

The tenant is successful in the application to have the landlord's One Month Notice to End Tenancy for Cause cancelled, and orders that the landlord comply with the Act in regard to rent increases and accessing the tenant's unit. The landlord is not successful in the cross application and the landlord'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: September 17, 2014

Residential Tenancy Branch

