



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Artland Holdings Ltd.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes DRI, CNC

Introduction

This hearing was convened in response to an application by the Tenant pursuant to the *Residential Tenancy Act* (the “Act”) for and Orders cancelling a notice to end tenancy under Section 47 and disputing an additional rent increase under Section 43.

The Tenants 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 tenancy?

Background and Evidence

The tenancy of a two bedroom, two bath rental unit started in 2011 with two tenants, one of which is the applicant in this dispute. On or before July 31, 2014 the Tenants received a one month notice to end tenancy for cause (the “Notice”). The Notice sets out the following reasons:

- Breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so; and
- Tenant has assigned or sublet the rental unit without the landlord’s written consent.

The Landlord did not provide a copy of the written tenancy and states that the Tenants brought in another person without the consent of the Landlord and therefore breached a material term of the tenancy agreement. The Landlord indicates that the tenancy agreement provides that when a person who is not listed as a tenant resides in the unit in excess of two weeks that person shall be deemed an occupant contrary to the tenancy agreement. The Landlord states that the

tenancy agreement is silent on the matter of guests. The Landlord indicates that the tenancy agreement further provides that where a tenant anticipates an additional person in the unit the tenant must apply in writing for a person to become a permanent occupant. The Landlord indicates that there are no provisions governing the Landlord's consent for permanent occupancy. The Landlord argues that the failure of the Tenant to obtain the Landlord's consent is a material breach of the tenancy agreement. The Landlord agrees that no letter in relation to the Tenant's notice of another person being in the unit was sent to the Tenant prior to the issuance of the Notice.

The Tenants state that the "additional occupant" in question is the fiancé of one of the Tenants who stays at the unit periodically on week-ends. The Tenants state that the fiancé did move some of her belongings into the unit so the Tenants believed that they were required to inform the Landlord of this presence in the unit and did so by email dated July 18, 2014. The Tenant with the fiancé states that they plan to marry and live elsewhere after the marriage.

The Tenant states that the unit requires many repairs and that Landlord has threatened to raise their rent over the allowable limit if repairs are done. The Tenant disputes this future rent increase.

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. As there is no evidence that the Tenants either sublet or assigned the tenancy, I find that the Landlord has not met the burden of proof required for this reason and that this reason is therefore not valid.

Given that the Landlord did nothing to respond to the Tenant's notice that a fiancé was moved into the unit prior to issuing the Notice, and considering that the Landlord is asserting the breach of a material term in the Notice, I find that the Landlord failed to provide written notice to the Tenants to correct the breach prior to issuing the Notice. Further, given the Landlord's oral evidence on the terms of the tenancy agreement, I find that the automatic deeming of a person as an occupant after two weeks of being in the unit to be in conflict with the Act and Regulations

that provides that a landlord must not unreasonably restrict guests. As such I find that the remaining reason for the notice is not valid.

As neither of the reasons for the Notice has been found to be valid I find that the Tenant has substantiated that the Notice is not valid and is therefore entitled to a cancellation of the Notice. The tenancy continues.

As the Landlord has not given the Tenants any rent increase, I find that the Tenant's dispute against a rent increase currently has no basis. The Tenant has leave to reapply to make an application to dispute a rental increase should the Landlord issue such an increase in the future.

Section 32 of the Act provides that a landlord must provide and maintain residential property in a state of decoration and repair that complies with the health, safety and housing standards required by law, and having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant. As the Tenant has indicated that the unit requires repairs but as the Tenant has not included any claim for repairs in the current application, I note that the Tenant remains at liberty to make such a claim if necessary.

Conclusion

The Notice is cancelled and of no effect.

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: October 09, 2014

Residential Tenancy Branch

