



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, OLC

Introduction

The tenant applies to cancel a one month Notice to End Tenancy dated September 15, 2014 and for an order that the landlord comply with the law and/or the tenancy agreement.

The Notice to End Tenancy alleges that the tenant has been repeatedly late paying rent and has an unreasonable number of occupants in her rental unit. A third ground given in the Notice was withdrawn by the landlord at the hearing.

Issue(s) to be Decided

Does the relevant evidence presented at hearing show on a balance of probabilities that there were valid grounds for the Notice? Has the landlord done something or failed to do something that would justify and order that he comply with the law or tenancy agreement?

Background and Evidence

The rental unit is a three bedroom townhouse in a sixplex type building. The tenancy started in November 2012. The monthly rent is currently \$725.00, due on the first of each month, in advance. The landlord holds a \$350.00 security deposit.

There is a written tenancy agreement of sorts. It does not indicate who the tenant is or who the landlord is. The signature entered under "LANDLORD" cannot be deciphered. The tenant does not appear to have signed the document. She is listed as a person occupying the premises and that "only those persons listed herein shall be permanent occupants of the premises unless otherwise authorized in writing by the landlord."

The tenancy agreement does not mention the tenant's three children who moved in with her and are permanent occupants.

The landlord's brother, Mr. C.S., who looks after rent matters, testifies that the tenant has been late paying rent in September 2013, February 2014 and May 2014. The tenant says she was not late in May, but rather, that, as was customary, she attended at the landlord's brother Mr. C.S.'s place to pay but he didn't answer the door, later indicating he may have been in the basement. She says she paid shortly after that day.

The landlord testifies that the tenant's boyfriend "Merv" is living with her and has been for a long time. He and his brothers have seen Merv's truck at the premises everyday early in the morning. The tenant says she works night shifts and Merv, her boyfriend, babysits for her. As well, he visits. She says he resides with his mother.

The advocate for the tenant points out that an identical Notice was struck down in an earlier dispute resolution, RTB file #251923.

Analysis

As per Residential Tenancy Policy Guideline 38 "Repeated Late Payment of Rent," a tenant who has been late paying rent three times is generally considered to have been repeatedly late, as long as the incidents of late payment are not too far apart.

In this case I am not persuaded that the May rent was late. It appears to have been presented or "tendered" at the normal place on time and only through a quirk was it late.

Additionally, the first of the three alleged late rents was more than a year before the eviction Notice. That is too long in the past to be considered as repeat behaviour.

In any event, the landlord gave an earlier Notice for the same late payments and failed to defend that Notice at the hearing of RTB file#251923. In my view the landlord cannot have a second go at evicting the tenant for the same reasons in that failed Notice. Those reasons have, technically, been adjudicated upon. The landlord did not attend that hearing, the grounds for that Notice were not proved.

I appreciate that the landlord wants to be careful about who he lets live in the complex. He has rented out to mostly single women with families and doesn't want a male troublemaker in their midst.

However, the eviction Notice was given alleging an unreasonable number of occupants were in the premises, not that the tenant didn't have written authorization for Merv to live there. If Merv is living there it may be in violation of the tenancy agreement. As that is not an issue before me I decline to rule on it.

Having Merv in the three bedroom home with the tenant's three (possibly two now) children is not an unreasonable number of occupants within the eviction provisions of s. 47 of the *Residential Tenancy Act* and so that ground for the eviction Notice must fail as well.

In regard to the harassment allegation made during the hearing. I do not consider that in these circumstances the landlord giving a second, identical Notice after the first was struck out to be harassment. There no cause for a compliance order.

Conclusion

The tenant's application to cancel the Notice is allowed. The Notice to End Tenancy for cause dated September 15, 2014 is void 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: November 06, 2014

Residential Tenancy Branch

