



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, MNDC, OLC, FF, O

Introduction

This hearing was convened by way of conference call concerning an application made by the tenants for an order cancelling a notice to end tenancy for cause; for a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement; for an order that the landlord comply with the *Act*, regulation or tenancy agreement; for a determination of the terms of the tenancy agreement; and for recovery of the filing fee from the landlord for the cost of the application.

Both tenants and the landlord attended the hearing and gave affirmed testimony, and the landlord was permitted to have an agent assist and also testify. The parties provided evidentiary material in advance of the hearing to the Residential Tenancy Branch and to each other. The parties were given the opportunity to cross examine each other on the evidence and testimony provided, all of which has been reviewed and is considered in this Decision.

No issues with respect to service or delivery of documents or evidence were raised.

Issue(s) to be Decided

- Should the notice to end tenancy be cancelled?
- Have the tenants established a monetary claim as against the landlord for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement, and more specifically for overpayment of rent?
- Have the tenants established that the landlord should be ordered to comply with the *Act*, regulation or tenancy agreement, and more specifically regarding guests in the rental unit?
- Have the tenants established that the director should make a determination regarding guests and occupants in the rental unit?

Background and Evidence

The landlord testified that this one year fixed-term tenancy began on July 1, 2014 and the tenants still reside in the rental unit. The rental unit is a 2 bedroom basement suite

in a home that is also occupied by the landlord. Rent in the amount of \$1,100.00 per month including utilities is payable in advance on the 1st day of each month and there are currently no rental arrears. At the outset of the tenancy the landlord collected a security deposit from the tenants in the amount of \$550.00 which is still held in trust by the landlord.

A copy of the tenancy agreement has been provided which contains an Addendum. Paragraph 3 states: "3. The tenant must be aware that only the persons named on the lease may live in the residence. If any other people are staying on site, this must be authorized by the landlord and each additional person will be charged \$50 on top of the regular monthly rent." The landlord testified that the boyfriend of one of the tenants is pretty much living in the rental unit. The landlord told the tenants that there was not a problem with him staying occasionally but if he was to stay there on a regular basis, the landlord would want to re-new the lease with his name on it and the rent would be increased by \$50.00 per month for the extra utilities costs. The tenants paid the additional \$50.00 for the months of July and August, 2014 but refused to continue to pay it.

The landlord's daughter sent the tenants a text message for the landlord saying that several times per week, week after week, the landlord expects the extra money for utilities. The landlord can hear the voices and knows that the boyfriend is there. The landlord testified that a reasonable amount of time for a guest to be considered a guest is once per week. The tenant's letter of November 7, 2014 which has been provided for this hearing states that he's staying and then that he is not staying, and the landlord was never asked if he could stay. The landlord also knows what the boyfriend's car looks like and recognizes the plate number, and testified that when the tenant comes home, shortly thereafter, the boyfriend arrives as well.

The landlord served the tenants with a 1 Month Notice to End Tenancy for Cause, and a copy has been provided. It is dated October 27, 2014 and contains an expected date of vacancy of November 30, 2014. The reason for issuing the notice is: "Tenant has allowed an unreasonable number of occupants in the unit/site;" and, "Breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so."

The landlord's agent testified that she is the daughter of the landlord and prepared the notice to end tenancy and the landlord served it by posting it to the door of the rental unit on October 27, 2014. The landlord had texted the tenants wanting to re-write the lease or have the additional \$50.00 per month paid. One of the tenants delivered a letter that day saying that the tenants refuse to pay the extra amount. Based on that letter, the landlord issued the notice.

The landlord's agent also testified that she lives one street away and visits the property often, 3 or 4 times per week. Based on seeing the car of the tenant's boyfriend and comments made by neighbours who all say the car is there often, the landlord's agent is

sure the boyfriend has been occupying the rental unit contrary to the tenancy agreement.

The landlord's agent also testified that there are a lot of half truths in the tenant's letter. The first says that the boyfriend was living with his mother since the beginning of this lease, however his mother has provided a letter saying that he moved into her home during the month of August, 2014. Therefore, the landlord is confident that he lived in the rental unit for the entire month of July. The tenant's letter also states that sometimes they car-pool, but the shift schedules that the tenant has provided don't overlap. The tenant's letter also states that he is there a few times per week, but the landlord feels that 3 or more is too often. People who work out of town still have to pay rent, and he's been there so often he's considered a resident, not a guest. Neither the landlord nor the landlord's agent have ever complained about cars being parked in front of the home during the day.

The first tenant testified that she has never told the landlord that the boyfriend lives with the tenants. He had his own apartment until he moved into his mom's home in August. He spent a few nights at the rental unit only when the tenant was there, perhaps 4 nights each week for 2 weeks and now comes over about twice a week. He moved out of his apartment on July 31, 2014 and into his mom's home. His parents had just moved as well, so in the confusion the tenants allowed him to stay at the rental unit, but none of his belongings are there.

The tenant also testified that she works till midnight almost every night and the other tenant works 8:30 am to 4:30 pm, so the tenant keeps quiet in the evenings, and the toilet doesn't even get flushed. The tenants are also students and don't feel they should have to pay more rent.

The second tenant testified that over the past few months, there has been a build-up of a bunch of things. The landlord has complained about cars on the road, and the tenant has received text messages about vehicles that are not vehicles belonging to guests of the tenants, nor do the tenants know who they belong to.

The tenant further testified that she does not want to live with the other tenant's boyfriend, and if he did live there, the tenant would not be living there. She further stated that in her opinion 2 or 3 times per week staying overnight would be reasonable. No one is in the rental unit when the tenants are not home. No one other than the tenants cooks or showers there. The tenants paid the landlord an extra \$50.00 per month for July and August, but the boyfriend has not stayed beyond 3 times per week since. The landlord has been living in the Yukon and the boyfriend has not been at the rental unit. The tenant speculates that the boyfriend doesn't want to stay there because of this dispute.

Closing Submissions of Landlord:

The landlord's agent submits that the tenants have admitted that the boyfriend stays in the rental unit more than 3 nights per week, which justifies ending the tenancy. She further submits that the tenant's letter says, "...a few times a week," which is too much and he is now resident.

The landlord's agent also submits that the monetary claim of the tenants should be dismissed because the tenants signed the Addendum and testified that the boyfriend lived there. The tenants were told at the outset of the tenancy that 1 night per week would be reasonable.

One of the tenants submits that the parties simply don't agree on a number of times the boyfriend can stay.

Analysis

Where a tenant disputes a notice to end tenancy given by a landlord, the onus is on the landlord to establish that it was issued in accordance with the *Residential Tenancy Act*, which can include the reasons for issuing it. In this case, I have reviewed the notice, and I find that it is in the approved form and contains information required by the *Act*. I am also satisfied that the tenants were deemed served with the notice on October 30, 2014, being 3 days after it was posted to the door of the rental unit. The tenants do not dispute that. Therefore, the soonest effective date of vacancy is November 30, 2014, which is shown on the notice.

With respect to the reasons for issuing the notice, I accept that the number of occupants permitted to reside in the residence is a material term of the tenancy. However, I do not accept that the landlord gave the tenants a reasonable time after written notice to correct it. The parties exchanged text messages, and when the landlord didn't receive the preferred response, the landlord issued the notice. What a landlord is required to do is to provide a written notice to the tenants setting out what exactly the landlord expects and provide a date by which the tenant is expected to comply, and then wait to see if the term is corrected.

With respect to the other reason for issuing the notice, "Tenant has allowed an unreasonable number of occupants in the unit/site," I accept that the tenants were well aware at the outset of the tenancy that the landlord expected extra money for utilities if there was another occupant. Whether the boyfriend actually lives there or not, I have to consider what was contemplated at the time the agreement was entered into and the conduct of the parties.

I have read the material provided by the parties, including the messages, and in considering the testimony of the parties, I am not satisfied that the boyfriend resides in the rental unit. One of the tenants testified that if he did live there, she would move out because she doesn't want to live with him. I also accept that even though his car may be at the rental unit, that doesn't prove that he lives there. I am also concerned that the Addendum to the tenancy agreement does not specify what the parties agreed to with

respect to how often a guest is permitted to be there without being considered an additional occupant. I do accept that the parties made the agreement based on 2 people residing in the rental unit, and I accept that the Addendum was made to prevent the landlord from incurring additional utilities costs since utilities are included in the rent and the tenants were aware of that at the time of signing.

The tenants submit that a landlord may not restrict guests, and the *Act* states:

Occupants and guests

- 9 (1) The landlord must not stop the tenant from having guests under reasonable circumstances in the rental unit.
- (2) The landlord must not impose restrictions on guests and must not require or accept any extra charge for daytime visits or overnight accommodation of guests.
- (3) If the number of occupants in the rental unit is unreasonable, the landlord may discuss the issue with the tenant and may serve a notice to end a tenancy. Disputes regarding the notice may be resolved by applying for dispute resolution under the *Residential Tenancy Act*.

One of the tenants testified that the boyfriend has not stayed in the rental unit more than 3 nights per week since moving in with his mother in August, 2014. The landlord's agent submitted that the tenants have admitted that the boyfriend stays in the rental unit more than 3 nights per week, which justifies ending the tenancy. The parties are looking to me to make a determination on what is reasonable, and I find that as a result of the evidence, more than 3 nights in a week is not reasonable considering the reason the Addendum was created. If the tenant's boyfriend or any other guests stay in the rental unit for more than 3 days per week, the landlord is entitled to have notice of it or may end the tenancy after giving the tenants written notice and a reasonable time to correct the breach. However, the *Act* does not permit a landlord to charge any amount for guests.

Summary

I accept the testimony of the tenants that the extra \$50.00 was paid for the months of July and August, 2014. The landlord does not dispute that, and I find that the tenants have established a monetary claim in the amount of \$100.00 as recovery.

I further find that the landlord has failed to establish that the tenants have allowed an unreasonable number of occupants in the rental unit or that the tenants have breached a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so. The notice is hereby cancelled and the tenancy continues.

The *Residential Tenancy Act* also permits me to make any orders necessary to give effect to the rights, obligations and prohibitions under the *Act*, including an order that a party comply with the *Act* or the tenancy agreement. I hereby order the tenants to comply with the tenancy agreement by limiting the number of nights that the boyfriend or any other guest stays in the rental unit.

Since the tenants have been partially successful with the application, the tenants are also entitled to recovery of the \$50.00 filing fee.

I order the tenants to reduce a future month of rent by \$150.00 in full satisfaction of the monetary claim and the filing fee.

Conclusion

For the reasons set out above, the 1 Month Notice to End Tenancy for Cause issued on October 27, 2014 is hereby cancelled and the tenancy continues.

I hereby order the tenants to reduce rent for a future month by \$150.00 in full satisfaction of the monetary award herein and recovery of the filing fee.

I hereby order the tenants to comply with the tenancy agreement by limiting the number of the number of nights that the boyfriend or any other guest stays in the rental unit.

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: December 10, 2014

Residential Tenancy Branch

