



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

CNC, FF

Introduction

This hearing was convened in response to the Tenant's Application for Dispute Resolution, in which the Tenant applied to set aside a Notice to End Tenancy for Cause and to recover the fee for filing this Application for Dispute Resolution.

Both parties were represented at the hearing. They were provided with the opportunity to submit documentary evidence prior to this hearing, to present relevant oral evidence, to ask relevant questions, and to make relevant submissions.

The Tenant stated that on November 20, 2014 the Application for Dispute Resolution, the Notice of Hearing, and documents the Tenant wishes to rely upon as evidence were sent to the Landlord, via registered mail. The Agent for the Landlord acknowledged receipt of these documents and they were accepted as evidence for these proceedings.

On December 01, 2014 the Landlord submitted documents to the Residential Tenancy Branch, which the Landlord wishes to rely upon as evidence. The Agent for the Landlord stated that these documents were served to the Tenant by registered mail on December 02, 2014. The Tenant acknowledged receipt of these documents and they were accepted as evidence for these proceedings.

On December 03, 2014 the Landlord submitted digital evidence to the Residential Tenancy Branch, which the Landlord wishes to rely upon as evidence. The Agent for the Landlord stated that this evidence was served to the Tenant by email on December 04, 2014. The Tenant acknowledged receipt of the evidence and it was accepted as evidence for these proceedings.

On December 04, 2014 the Tenant submitted documents to the Residential Tenancy Branch, which the Tenant wishes to rely upon as evidence. The Tenant stated that these documents were delivered to the Landlord's mail box on December 08, 2014. The Landlord acknowledged receipt of these documents and they were accepted as evidence for these proceedings.

I note that all of the documents submitted in evidence have been reviewed but have not all been referenced in this decision.

Issue(s) to be Decided

Should the Notice to End Tenancy for Cause, served pursuant to section 47 of the *Residential Tenancy Act (Act)*, be set aside?

Background and Evidence

The Landlord and the Tenant agree that this tenancy began on May 15, 2013 and that the Tenant is currently paying subsidized rent of \$259.00 per month.

A copy of the tenancy agreement was submitted in evidence, section 14 of which stipulates that:

- Only persons listed as tenants and occupants are permitted to live in the rental unit, unless the landlord consents to additional occupants/tenants
- Any change in the number of occupants is material and of great importance to the landlord and entitles the landlord to end the tenancy
- If the tenant is eligible for a rent subsidy, the tenant agrees that any person who resides with the tenant for more than 14 days per year will be considered an occupant, in which case the occupant's income must be declared and, if the occupant is over 19, must agree to be a tenant.

The Agent for the Landlord stated that on November 10, 2014 the Landlord mailed a One Month Notice to End Tenancy for Cause to the Tenant, which declared that the Tenant must vacate the rental unit by December 31, 2014. The Tenant stated that this Notice was received in the mail by the father of two of her children and that he provided it to her on, or about, November 11, 2014. The Notice declared that the Landlord was ending the tenancy because the Tenant has breached a material term of the tenancy that was not corrected within a reasonable time.

The Landlord and the Tenant agree that the Landlord served the Tenant with a letter, dated October 20, 2014, a copy of which was submitted in evidence. In the letter the Landlord requested that the father of two of the Tenant's children, hereinafter referred to as "B", be added to the tenancy agreement and that she provide his income details.

The Landlord and the Tenant agree that the Landlord served the Tenant with a letter, dated October 28, 2014, a copy of which was submitted in evidence. In the letter the Landlord requested that a response to the letter of October 20, 2014.

The Landlord and the Tenant agree that the Tenant responded to these requests in a letter dated October 22, 2014. In the letter the Tenant declared that "B" is living with his girlfriend and he is not on the girlfriend's tenancy agreement. She declared that "B" has been visiting his children "every couple of days".

The Landlord and the Tenant agree that the Tenant responded to these requests in an email dated November 04, 2014. In the letter the Tenant declared that "B" is not living with her; that he frequently visits his children; and that he occasionally stays overnight.

At the hearing the Tenant stated that:

- "B" frequently visits his children in the rental unit during the day but In the previous month he has only visited them 3 or 4 times
- "B" previously minded the children while the Tenant was at work but her mother now provides that care
- "B" has stayed overnight in the rental unit 7 or 8 times in the last 8 months
- When "B" is in this community he stays with friends
- In her letter of October 22, 2014 she mistakenly declared that "B" lives with his girlfriend
- When "B" is in Victoria he lives with his mother
- "B" does not reside in the rental unit with her.

The Tenant submitted mail for "B", dated October 30, 2014, which has been mailed to a Victoria address. The Tenant submitted a driver's license and identity card for "B", which has a similar (but not identical) Victoria address.

The Tenant submitted a letter from her mother, in which the mother declares that "B" does not live with the Tenant and that he stays with friends when he stays overnight in the community.

The Tenant submitted a letter from "B"s mother, in which the mother declares that "B" lives with her in Victoria.

The Tenant submitted a letter from an occupant of the residential complex in which the occupant declared she knows "B" is not living in the complex.

The Agent for the Landlord stated that the Landlord believes "B" is residing in the rental unit because several neighbours have informed her that he is living there. The Landlord submitted several letters/emails from residents of the complex in which the authors indicate they believe "B" is living in the rental unit.

One of the emails, dated September 17, 2014, was sent to the Agent for the Landlord by the Agent for the Landlord. She stated that the content of this email was provided to her from the occupant of unit #1, via text message, and that she forwarded it to her email to record the message. The Tenant submitted a document from the occupant of unit #1 in which she declared that she did not send a text message regarding the Tenant.

The Landlord submitted a letter from the maintenance foreman, dated October 24, 2014, who declared that when he has been on the property and spoken to "B" he assumed that "B" was a tenant in the rental unit.

The Landlord submitted a letter from an electrician, dated October 23, 2014, who declared that on two occasions he has been in the rental unit when "B" represented himself as a tenant.

The Landlord submitted a letter from a painter, dated October 22, 2014, who declared that "B" asked him for paint to paint "his" fence and that he assumed he was a tenant.

The Witness for the Landlord stated that on October 18, 2014 "B" exited the rental unit to speak with him, at which time he was wearing only his underwear. He stated that he believed he had been staying overnight, given his state of dress. The Tenant stated that "B" had stayed overnight on this occasion.

The Witness for the Landlord stated that "B" uses the term "we" when he discusses tenancy issues with "B", which causes him to conclude that "B" considers himself a tenant. The Tenant is not aware that "B" refers to himself as a tenant.

The Landlord submitted a recording of phone messages left by "B", which the Witness for the Landlord contends indicates "B" is representing himself as a tenant.

Analysis

Section 47(1)(h) of the *Act* authorizes a landlord to end a tenancy if the tenant has failed to comply with a material term of the tenancy and has not corrected the situation within a reasonable time after the landlord gives written notice to do so. On the basis of the undisputed evidence, I find that the Tenant was served with a One Month Notice to End Tenancy which declared that the Landlord intends to end the tenancy on this basis of section 47(1)(h) of the *Act*.

I find that there is a term in the tenancy agreement that prohibits persons not named on the tenancy agreement from living in the rental unit rent and that requires any adult who resides for more than 14 days per year with a tenant whose rent is subsidized to agree to be a tenant and to provide proof of his/her income.

I find this to be a material term of the tenancy, in part, because the agreement clearly specifies the term is of great importance to the landlord and that the tenancy could be ended as a result of a breach of this term. Given that the Tenant's rent is based on household income, I find this term to be highly relevant to the tenancy and should be considered a material term of the tenancy.

On the basis of the undisputed evidence, I find that on October 20, 2014 the Landlord requested that "B" be added to the tenancy agreement and that his income details be provided to the Landlord. I find that this serves as written notice to correct an alleged

breach of the material term of the tenancy agreement. On the basis of the undisputed evidence, I find that this alleged breach has not been corrected.

This issue to be determined is whether or not “B” is actually living in the rental unit, in which case the Landlord would have grounds to end the tenancy pursuant to section 47(1)(h) of the *Act*. On the basis of the undisputed evidence, I find that “B” is frequently at the rental unit for the purpose of caring for/visiting his children.

I find that the Tenant has submitted sufficient evidence to show that “B” is not living with her, which includes:

- Tenant’s testimony that “B” is not living with her; that he does not frequently stay overnight; and that he stays with friends when he is in this community
- the written declaration of the Tenant’s mother who declares “B” is not living in the unit and that he stays overnight with friends when he is in this community
- the written declaration of “B”’s mother who declares “B” lives with her in Victoria
- the letter from an occupant of the residential complex in which the occupant declared she knows “B” is not living in the complex
- mail and personal identification that shows “B” has an address in Victoria.

I find that the Landlord has submitted insufficient evidence to establish that “B” is residing in the rental unit. In reaching this conclusion I have placed limited weight on the observations of neighbours, as it is possible that they have concluded that “B” lives at the rental unit simply because they see him frequently. Given that there is no dispute that he is a frequent visitor to the rental unit, I find it possible that his presence at the unit is being misinterpreted.

In determining there is insufficient evidence to conclude that “B” is living in the rental unit I have placed limited weight on the observations of the painter and the maintenance foreman, who assumed “B” was a tenant. Given that there is no dispute that he is a frequent visitor to the rental unit, I find it possible that his presence at the unit is being misinterpreted by these individuals.

In determining there is insufficient evidence to conclude that “B” is living in the rental unit I have placed limited weight on the observations of the electrician who declared that “B” represented himself as a tenant on two occasions. I find it is possible that “B” did represent himself as a person with authority in the rental unit which, given his relationship to the Tenant, does not necessarily mean he is a tenant.

As there is no dispute that “B” has stayed overnight in the rental unit on occasion, I cannot conclude that “B” is a tenant simply because the Witness for the Landlord observed him in a state of undress on October 18, 2014.

In determining there is insufficient evidence to conclude that “B” is living in the rental unit I have placed limited weight on the Witness for the Landlord’s assertion that “B” represents himself as a tenant. I have listened to the digital recording of a message left

for the Agent for the Landlord and, in my view, "B" does not represent himself as a tenant. While he is speaking on behalf of the tenant and addressing issues in relation to this tenancy, I find that he could simply be responding on behalf of the Tenant as a result of his familiarity with the rental unit and his familial relationship with her.

After considering all of the evidence presented in this matter, I find it is possible that "B" is simply a frequent visitor at the rental unit and that he is not residing there. I therefore find that the Landlord does not have grounds to end this tenancy in accordance with section 47(1)(h) of the *Act* and I grant the Tenant's application to set aside the Notice to End Tenancy that is the subject of these proceedings.

Conclusion

As I have determined that the Landlord has submitted insufficient evidence to establish that there are grounds to end this tenancy, I order that this tenancy continue until it is ended in accordance with the *Act*.

As I find the Tenant's application has merit, I authorize the Tenant to deduct \$50.00 from one rent payment, as compensation for the fee she paid to file this Application for Dispute Resolution.

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 17, 2014

Residential Tenancy Branch

