



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Gramercy Enterprises Ltd.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPC, FF, CNC

Introduction

There are applications filed by both parties. The landlord seeks an order of possession as a result of a 1 month notice to end tenancy issued for cause and recovery of the filing fee. The tenant has made an application for an order cancelling the notice to end tenancy.

Both parties attended the hearing by conference call and gave testimony. As both parties have attended and have confirmed receipt of the notice of hearing package of the other party and the submitted documentary evidence, I am satisfied that both parties have been properly served.

Issue(s) to be Decided

Is the landlord entitled to an order of possession?

Is the tenant entitled to an order cancelling the notice to end tenancy?

Background and Evidence

This tenancy began on September 1, 2014 on a fixed term tenancy ending on August 30, 2015 as shown by the submitted copy of signed tenancy agreement dated August 20, 2014. The monthly rent is \$1,300.00 payable on the 1st of each month and a security deposit of \$650.00 and a pet damage deposit of \$650.00 were paid.

Both parties confirmed that the landlord served the tenant with a 1 month notice to end tenancy issued for cause dated October 18, 2014 on the same date. Both parties confirmed that the effective end of tenancy date was November 30, 2014 and that two reasons for cause were selected.

- 1) Tenant has allowed an unreasonable number of occupants in the unit/suite.

- 2) 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 states that she has received several complaints from other tenants that this tenant is getting frequent visitors who stay for a few minutes and then leaves. The landlord also states that the tenant's girlfriend is living with him. The tenant disputes this stating that there is no one living with him. The landlord states that his girlfriend lives at home with her mother.

The landlord also states that the tenant has a large pitfull dog that he does not have permission to keep. Both parties confirmed that the tenant has permission to keep 1 small dog (Pomeranian) as part of his tenancy. Both parties confirmed that the tenant had a large pitbull. Both parties confirmed that the tenant was given written notice to remove the dog on October 17, 2014 and that an inspection would take place on October 18, 2014. The landlord states that on October 18, 2014 she attended the rental unit and heard a dog barking. The landlord states that she could tell that it was a larger pitbull as opposed to a small Pomeranian dog. The tenant disputes this stating that the dog was removed upon receiving the notice. The landlord stated that she did not see the dog, but that after serving the notice to end tenancy that she has seen the tenant with the dog on the rental property. The tenant disputes this stating that he did not wish to jeopardize the tenancy and had removed the dog immediately upon being given notice.

Analysis

I accept the evidence provided by both parties and find on a balance of probabilities that the landlord has failed to established a claim that the tenant had an unreasonable number of occupants in the unit. By the landlord's own omission was that the tenant had frequent visitors and not occupants living at the rental. The landlord had no supporting evidence to justify her assumption that the tenant's girlfriend was living there other than to say that she saw her there alot. This portion of the claim made by the landlord is dismissed. As for the claim of breach of a material term of the tenancy, it is established that the tenant had a large dog that was not permitted on the rental property as no written permission had been granted. However, the landlord has failed to provide sufficient evidence to satisfy me that the tenant did not comply with the written notice to remove the dog. The landlord has provided direct testimony that the dog is still present. The tenant has disputed this stating that the dog was removed immediately upon being served the notice. The onus or burden of proof lies with the party who is making the claim. In this case it belongs to the landlord. When one party provides evidence of the facts in one way and the other party provides an equally probable explanation of the

facts, without other evidence to support their claim, the party making the claim has not met the burden of proof, on a balance of probabilities, and the claim fails. The landlord has failed to establish a claim that the tenant breached a material term of the tenancy. The landlord's application is dismissed. The tenant has been successful in his application. The notice dated October 18, 2014 is set aside and that tenancy shall continue.

Conclusion

The landlord's application is dismissed.

The notice to end tenancy dated October 18, 2014 is set aside and the tenancy shall continue.

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 02, 2014

Residential Tenancy Branch

