



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, FF

Introduction

This hearing dealt with the tenants' Application for Dispute Resolution seeking to cancel a notice to end tenancy.

The hearing was conducted via teleconference and was attended by both tenants and both landlords.

During the hearing the landlords did not request an order of possession should the tenants be unsuccessful in their Application for Dispute Resolution.

Issue(s) to be Decided

The issues to be decided are whether the tenants are entitled to cancel a 1 Month Notice to End Tenancy for Cause and to recover the filing fee from the landlords for the cost of the Application for Dispute Resolution, pursuant to Sections 47, 67, and 72 of the *Residential Tenancy Act (Act)*.

Background and Evidence

The tenants submitted into evidence the following relevant documents:

- A copy of a tenancy agreement signed by the parties on August 2, 2005 for a monthly rent of \$900.00 due on the 1st of each month with a security deposit of \$450.00 paid; and
- A copy of a 1 Month Notice to End Tenancy for Cause issued by the landlords on December 10, 2014 with an effective vacancy date of January 31, 2015 citing the tenants have assigned or sublet the rental unit/site without landlord's written consent.

The landlords submit that the last time they had spoken with the female tenant she had raised the issue of the potential for subletting the rental unit. The landlords believe this conversation took place sometime within the month or so before December 10, 2014. The tenants submit the conversation took place in August 2014.

The landlords submit that on December 10, 2014 they saw two people entering the rental unit without either of the tenants named on the tenancy agreement. They state that they were concerned about people they did not know having access to the rental unit and they believe the tenants may have given their keys to a number of people and so they are unsure who may have access to the unit.

The landlords testified that when they saw these people entering the rental unit they contacted the Residential Tenancy Branch and were advised to immediately issue a 1 Month Notice to End Tenancy for Cause.

The tenants submit that they had guests who were staying overnight on December 10, 2014. The female tenant testified that their guests arrived while she was at work and that she gave them a key to enter the unit so they did not have to wait around all day. The tenants submit they have not sublet or assigned their tenancy.

Analysis

Section 47 of the *Act* allows a landlord to end a tenancy by giving notice to end the tenancy if the tenant purports to assign the tenancy agreement or sublet the rental unit without first obtaining the landlord's written consent as required by Section 34.

In order to end the tenancy based on the above noted cause the landlords have the burden to provide sufficient evidence to establish the tenants have taken the actions that the landlord is alleging and that these actions were sufficient cause to end the tenancy.

Section 28 states a tenant is entitled to quiet enjoyment including, but not limited to, rights to the following: reasonable privacy; freedom from unreasonable disturbance; exclusive possession of the rental unit subject only to the landlord's right to enter the rental unit in accordance with Section 29; and the use of common areas for reasonable and lawful purposes, free from significant interference.

Exclusive possession means that the tenants have the authority under the *Act* to have guests over, including overnight guests and that the only right allowed to the landlord in relation to possession is that the landlord may enter the unit in accordance with the requirements under Section 29, such as the requirement to provide the tenants with notice of landlord's entry 24 hours in advance of such entry.

Section 30(1) of the *Act* requires that a landlord not unreasonably restrict access to the residential property by the tenant of a rental unit that is part of the residential property or a person permitted on the residential property by that tenant.

Further to the right of exclusive possession the landlord cannot unreasonably restrict access to the rental unit by a person permitted on the residential property by the tenant. As such, I find that the landlord cannot restrict the tenants from allowing their guests to

access to the rental unit or prevent the tenants from providing their guests a key in circumstances that the tenants decide warrant such an action for their guests.

I note, as well, in this case the landlords did not contact the tenant to discuss whether or not the tenants were assigning or subletting the rental unit they just assumed so. As such, I find there is no evidence before me that the tenants have entered into any agreements to assign or sublet the rental unit to a third party without permission of the landlords. Therefore, I find the landlords do not have cause to end the tenancy.

Conclusion

Based on the above I order the tenants may cancel the 1 Month Notice to End Tenancy for Cause issued on December 10, 2014 and the tenancy remains in full force and effect.

I find the tenants are entitled to monetary compensation pursuant to Section 67 in the amount of **\$50.00** comprised of the fee paid by the tenants for this application. I order the tenants may deduct this amount from a future rent payment pursuant to Section 72(2)(a).

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: January 13, 2015

Residential Tenancy Branch

