



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: CNC OLC PSF DRI OPC FF

Introduction

This hearing dealt with an application by the tenant pursuant to the *Residential Tenancy Act* (the Act) for orders as follows:

- a) To cancel a notice to end tenancy for cause pursuant to section 47;
- b) To order the landlord to comply with the Act and not withdraw necessary facilities contrary to section 27 of the Act;
- c) To dispute an excessive rent increase; and
- d) To recover the filing fee for this Application.

Service:

The Notice to End Tenancy is an older form which the landlord dated January 20, 2015 to be effective February 28, 2015. The tenant /applicant gave evidence that they served the Application for Dispute Resolution and the landlord agreed they received it. I find the documents were legally served for the purposes of this hearing.

Issue(s) to be Decided:

Has the landlord proved on the balance of probabilities that there is sufficient cause to end the tenancy or is the tenant entitled to relief? Is the landlord entitled to an Order of Possession if the tenant is unsuccessful in the application?

Background and Evidence

Both parties attended the hearing and were given opportunity to be heard, to provide evidence and to make submissions. The undisputed evidence is that the tenancy commenced in October 2013, rent is \$750 a month and a security deposit of \$360 was paid. The landlord served a Notice to End Tenancy for the following reasons:

- a) The tenant has allowed an unreasonable number of occupants in the unit;
- b) The tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord; and
- c) The tenant is assigning the tenancy agreement without obtaining the landlord's consent.

The landlord provided no documentary evidence; there is no written tenancy agreement. He said the unit is a two bedroom basement unit of approximately 750 sq. ft. and he had agreed verbally with the tenants that there would be four occupants only and then the mother and father arrived five months later. The tenant said that she had told him when agreeing to rent that she and her husband with their two children would be there and her mother and father would join them later when visas were processed. She said she works 3 to 11 p.m., her husband is a long distance truck driver and is often only home on weekends and her parents' assistance was necessary. She said they had left a smaller unit to rent this unit because of her parents' arrival.

The landlord said the tenants also interfere with him and disturb his peaceful enjoyment as the tenant make telephone calls at midnight to another country and talks loudly for a long time just beneath his bedroom. The tenant denied this and said they have young children and don't talk late at night. They submitted a letter (unsworn) signed by several neighbours to say they are kind and respectful and they believe the landlord is trying to evict them because of a proposed illegal rent increase. The tenant said the landlord had tried to raise their rent by \$50 a month instead of the \$18.75 which is the permitted increase allowed under the Act for 2015. When they refused to pay this, they were served the Notice to End Tenancy.

Included with the evidence is the Notice to End Tenancy, a statement of the tenant and a letter signed by neighbours of the tenant.

On the basis of the documentary and solemnly sworn evidence presented for the hearing, a decision has been reached.

.

Analysis:

As discussed with the parties in the hearing, the onus is on the landlord to prove on a balance of probabilities that they have good cause to evict the tenant. Although the Notice to End Tenancy was on an old form, I find it is valid pursuant to Residential Tenancy Policy Guideline 18 as it had two pages with all the necessary information.

I find the evidence of the tenant credible and I prefer it to the evidence of the landlord. Although the landlord considers that four adults and two children are too many occupants for a two bedroom apartment, I find that he provided no written tenancy agreement limiting the number of occupants. I find this is not an unreasonable number of occupants for a two bedroom apartment of approximately 750 sq. ft. as the husband is on the road most of the time, the wife works very late at night, her Mother and Father are caring for the children so the unit often has only four occupants present. Although

the landlord said there was a verbal agreement for only four, I find the tenant's evidence more credible that she informed him that her parents would be joining them as she needed them for childcare so she could work.

On the second cause to end the tenancy, I find insufficient information to support the landlord's evidence that the tenant is talking on her telephone loudly at midnight. Although I give the unsworn letter from neighbours limited weight, it does support the tenant's evidence that they are a peaceful, respectful family and are not disturbing others around them. The letter also supported the tenant's evidence that she believed the Notice to End tenancy was motivated by her not accepting an illegal rent increase.

Both parties were advised of the Act and regulations regarding rent increases.

For all of the above reasons, I find there is insufficient evidence to support the landlord's reasons for ending the tenancy. I hereby set aside the Notice to End Tenancy dated January 20, 2015.

Conclusion:

The Application of the Tenant to set aside the Notice to End Tenancy is successful. The Notice to End Tenancy for cause dated January 20, 2015 is hereby set aside and the **tenancy is reinstated**. I find the tenant entitled to recover her filing fee for this application.

I HEREBY ORDER that the tenant may recover her \$50 filing fee by deducting \$50 from her rent for March 1, 2015. Her rent for March 1, 2015 is \$700.

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: February 17, 2015

Residential Tenancy Branch

