



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, 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.

Both tenants and the landlord attended the hearing, and each gave affirmed testimony. The parties were given the opportunity to question each other about 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

Has the landlord established that the notice to end the tenancy was issued in accordance with the *Residential Tenancy Act*?

Background and Evidence

The landlord testified that this month-to-month tenancy began on March 1, 2015 and the tenants still reside in the rental unit. Rent in the amount of \$1,200.00 per month is payable in advance on the 1st day of each month and there are no rental arrears. On February 27, 2015 the landlord collected a security deposit from the tenants in the amount of \$600.00 which is still held in trust by the landlord, and no pet damage deposit was collected.

The landlord further testified that she personally served one of the tenants with a 1 Month Notice to End Tenancy for Cause on March 30, 2015 and the other tenant was present. A copy of the notice has been provided and it is dated March 30, 2015 and contains an effective date of vacancy of April 30, 2015. The reasons for issuing the notice are:

- Tenant has allowed an unreasonable number of occupants in the unit/site;
- Tenant or a person permitted on the property by the tenant has:
 - seriously jeopardized the health or safety or lawful right of another occupant or the landlord;
 - put the landlord's property at significant risk.

The landlord testified that the rental unit was rented to the tenants and their 17 year old daughter. The landlord was advised that the mother of one of the tenants might also stay there, but soon another daughter, her boyfriend and a grandson were also there most of the time, increasing the number of occupants to 7. The landlord resides in the lower level of the rental complex and the water bill is 3 times as much as it should be from showers and doing laundry every day.

The landlord further testified that due to the noise from the rental unit, the landlord can't sleep at night. Also, the tenants' grandson turned on the water into a plugged sink and went to watch television causing the water to flood into the landlord's suite. The landlord called a contractor for an estimate on repairs, and the landlord has provided a copy. The sink clogged twice, and after the first time, the landlord cleaned all sink drains, but within 7 days, the major accident happened. All was working fine prior to the tenancy. Also, the boyfriend stayed at the rental unit 4 nights per week and parked his vehicle in the landlord's portion of the driveway blocking the landlord's vehicle.

The first tenant testified that laundry is never done after 8:00 p.m. and agrees that one daughter lives in the rental unit. The tenants also have another daughter who does not reside in the rental unit. The boyfriend stays at the rental unit sometimes, but not 4 days per week, and the tenancy agreement doesn't specify the number of people that can occupy the rental unit.

The rental unit is a 4 bedroom house which is why the tenants rented it, having moved from a 3 bedroom rental unit. The tenants reside in it with their daughter and a grandson.

The tenant admits that the tap was left on slightly and overnight it overflowed due to a clogged drain. The landlord came up to the rental unit screaming and swearing about it and the tenant denies that the parties were watching TV; it was 7:00 a.m. and the tenants were all sleeping and had no idea about it until the landlord arrived. The first time water leaked into the landlord's unit was on March 24, 2015 at 9:00 p.m. The second time was on March 30, 2015 due to a toilet running, and the tenant wasn't home, arriving after the incident.

The second tenant testified that when the toilet leaked into the landlord's unit, the landlord arrived early in the morning and the tenant let him in. The landlord cleaned it up. After the other incident, the landlord cleaned out hair in 2 sinks and the bathtub and the tenant does not believe that the tenants are responsible for clogged drains, and he didn't know the water was running. It's unfortunate that the baby ran the water, but the tenant didn't know about it.

The tenant also testified that the landlord has been leaving notes on the door about parking which is becoming a nuisance.

The landlord did not orally request an Order of Possession during the course of the hearing.

Analysis

Where a tenant disputes a notice to end a tenancy when 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. I have reviewed the notice and I find that it is in the approved form and contains information required by the *Act*. I also accept the undisputed testimony of the landlord that it was personally served to one of the tenants on March 30, 2015 with the other tenant present. I also find that the tenants have disputed the notice within the 10 days as required by the *Act*, having filed the application for dispute resolution on April 9, 2015.

With respect to the reasons for issuing it, neither party has provided a copy of the tenancy agreement. I accept the undisputed testimony of the tenant that it's a 4 bedroom house. Although there may be up to 7 people in the rental unit at any given time, the tenant's mother did not move in as the landlord was lead to believe, but the tenants' grandson did. The landlord was aware that the tenants' teen-age daughter was also going to live in the rental unit, and that amounts to 4 people. The other 3 are the tenant's mother, other daughter and a boyfriend of one of the daughters, however the tenants deny that any of them reside in the rental unit or that the boyfriend is there 4 days per week. I am not satisfied that there are an unreasonable number of occupants in the rental unit.

I have also reviewed the estimate of the work required to repair the lower unit after the flooding occurred, however I am not able to find that the flooding was caused as a result of the tenants' failure to comply with the *Act* or the tenancy agreement. There is no evidence that the tenants or anyone permitted on the property by the tenants intentionally or negligently jeopardized a lawful right or interest of the landlord or put the landlord's property at significant risk.

Conclusion

For the reasons set out above, the 1 Month Notice to End Tenancy for Cause dated March 30, 2015 is hereby cancelled and the tenancy continues.

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: May 22, 2015

Residential Tenancy Branch

