



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Hilltop Manor
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC, FF

Introduction

This is an application brought by the tenant(s) requesting an order canceling a Notice to End Tenancy and requesting recovery of their filing fee.

A substantial amount of documentary evidence, photo evidence, and written arguments has been submitted by the parties prior to the hearing. I have thoroughly reviewed all relevant submissions.

I also gave the parties and the witness the opportunity to give their evidence orally and the parties were given the opportunity to ask questions of the other parties and the witness.

All parties were affirmed.

Issue(s) to be Decided

The issue is whether or not to cancel or uphold a Notice to End Tenancy that was given stating the following reasons:

- The tenant has allowed an unreasonable number of occupants in the unit.
- The tenant has assigned or sublet the rental unit without landlord's written consent.

Background and Evidence

This tenancy began on July 1, 2012, and the tenancy agreement lists the above two applicants as the co-tenants in the rental unit.

Clause 19 of the tenancy agreement relates to occupants and invited guests at it states:

- The landlord must not stop the tenant from having guests under reasonable circumstances in the rental unit. The landlord must not impose restrictions on

guests and must not require or accept an extra charge for daytime visits or overnight accommodation of guests. If the number of occupants in the rental unit is unreasonable, the landlord may discuss the issue with the tenant and may serve a Notice to End Tenancy. Disputes regarding the notice may be resolved by applying for dispute resolution under the act.

In this case the landlords are alleging that the tenant has moved a third occupant into the rental unit and since this is a two bedroom unit that already has two occupants they believe this is an unreasonable number of people to be occupying this unit.

The landlords and the landlord's witness also testified that they were informed by the new occupant that he was paying \$400.00 a month rent to the tenant to be allowed to stay in the rental unit. They therefore believe that the tenant has sublet the rental unit without first getting written permission to do so.

The landlords are therefore requesting that the Notice to End Tenancy be upheld.

The tenant testified that he has not moved another occupant into the rental unit, that that person did stay with him for short period of time, however that person subsequently moved into a trailer with his family.

The tenant further testified that the reason the landlord see this other person at his rental unit is because this person visits on a daily basis, often until about 1 AM in the morning, however the person always goes to their own home to stay overnight.

He has no idea why the person would have told the landlords and the landlord's witness that he was paying rent to stay in the rental unit, this may just a been a misunderstanding.

Analysis

The tenant claims that there is not a third occupant in the rental unit and that this person just visits on a regular basis, however I have sworn testimony from two parties who state that the occupant told them directly that he was living in the rental unit and in fact was paying rent. Further there is a written witness statement that further supports the claim that a third occupant has moved into the rental unit.

It is my finding therefore that the landlords have shown "on the balance of probabilities" that the tenant has moved a third occupant into this rental unit, and since this is only a

two bedroom rental unit that already has two people living in it, it is my finding that there are now an unreasonable number of occupants living in the rental unit.

I therefore will not cancel the Notice to End Tenancy.

Conclusion

This application to cancel the Notice to End Tenancy and for recovery of the filing fee is therefore dismissed.

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: July 22, 2015

Residential Tenancy Branch

