



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MT, DRI, CNC, RP, AS, OPC, FF

Introduction

In the first application, issued June 29, 2015, the tenant seeks to cancel a one month Notice to End Tenancy for cause, for an order that the landlord make repairs and to permit her to sublet the premises. She also seeks to dispute a rent increase.

In the second application the landlord seeks an order of possession pursuant to the one month Notice.

Issue(s) to be Decided

Does the relevant evidence presented during the hearing show on a balance of probabilities that either party is entitled to any of the relief claimed?

Background and Evidence

The rental unit is a two bedroom basement suite in the landlord's home. The tenancy started in December 2014. The monthly rent is \$1050.00. The landlord holds a \$525.00 security deposit.

The landlord's testimony was given in Vietnamese and translated by Mr. H.

She says that the tenant's boyfriend comes and stays there at night. Sometimes he sleeps outside the door or in the laundry room. As well, he brings items he collects and spreads them out in the carport area and works on them. He leaves junk lying around. She has heard the tenant and her boyfriend fighting downstairs.

The landlord feels that as the boyfriend is not on the tenancy agreement he cannot stay in the rental unit and that the tenant is subletting without the landlord's consent. If the tenant is going to have others in the suite, she wants more rent.

The landlord says that the tenant is having unknown visitors arriving at the apartment and leaving early in the morning, sometimes with suitcases.

By a letter May 26, 2015 the landlord told the tenant to immediately stop the people that the tenant allows to stay overnight as a short stay or a travel stay. The landlord also directed the tenant to stop her boyfriend from sleeping at the door or inside the laundry room and from hanging around at night and from bringing used stuff and leaving it in the yard.

The tenant says she has filed evidentiary material with the Residential Tenancy Branch, including photos, on August 21, five days before the hearing, and that she delivered that material to the landlord on August 24, two days before the hearing. The material had not reached this file. The landlord says she received it only last night.

The tenant says the man referred to as her boyfriend is not. He is the father of the tenant's sixteen month old son. He is suffering from a brain injury. He lives elsewhere. She says that she has not invited him to the premises. He just comes. She says she now has a form of restraining order against him.

The tenant admits she is an "AirBnB" hostess. Through internet connections, she offers her second bedroom for a price to people passing through the city or looking for very temporary accommodation. They only come to sleep; not to eat or do laundry.

The tenant says there are rats running through her suite, there are sparks when she plugs in her TV and static from the walls, the floor is cold and that there are bars on the window preventing any emergency exit. She also says there is excessive noise from the landlord's abode above.

The tenant referred to a letter from an AirBnB client who stayed there July 3 to 20, attesting to the noise, vermin in a storage area, an unsafe electrical outlet and the concern about the barred windows.

The landlord says she does not have that letter and generally that what the tenant says is untrue. She says she's never been asked to remove the bars and that the fire alarm works.

Analysis

The tenant seeks more time to apply to cancel the Notice. It would appear that, at most, she was three days later and possibly not late at all in bringing her application. There is no evidence that the landlord has been or would be disadvantaged by the delay, I grant any necessary extension for the tenant to apply.

Regarding the tenant's complaint about noise from upstairs, it is not a claim fairly raised by the application. In addition, the evidence presented on the point is simply too vague to permit any finding of fact.

Regarding the tenant's complaints about the suite, it does not appear that the tenant has formally communicated her complaints to the landlord prior to this hearing, requiring the landlord to attend to repair. The application itself does not set out the particulars of the claim. For this reason I would dismiss the tenant's claim for a compliance order, with leave to re-apply.

Additionally, the tenant has not submitted her evidentiary material within the time set out in Rule 3.14 of the Rules of Procedure, which states:

Documentary and digital evidence that is intended to be relied on at the hearing must be received by the respondent and the Residential Tenancy Branch not less than 14 days before the hearing.

For this reason as well, I would dismiss the tenant's claim for a compliance order, with leave to re-apply.

I would point out that the municipal authority is often called on to investigate complaints of the nature the tenant has alleged and can be called on by either party.

The landlord's Notice to End Tenancy alleges three separate grounds for ending the tenancy:

- that the tenant has engaged in illegal activity that has or is likely to adversely affect the quiet enjoyment, security, safety or physical well-being of the landlord,

- that the tenant has breached a material term of the tenancy that was not corrected within a reasonable time after written notice to do so, and

- that the tenant has assigned or sublet the rental unit without the landlord's written consent.

It should be noted that the ending of a tenancy is a very serious matter and that a landlord seeking to establish cause for eviction must present cogent evidence.

It has not been made clear what "illegal" activity is being alleged. At best I can only assume it to be the AirBnB matter.

The landlord is under the impression that the written tenancy agreement prevents anyone but the tenant from residing in the premises. I have reviewed the agreement and it does not restrict the tenant in the number of occupants or who they might. Indeed, clause 11 of the agreement reads:

11. OCCUPANTS AND GUESTS

- 1) The landlord must not stop the tenant from having guests under reasonable circumstances in the rental unit.
- 2) The landlord must not impose restrictions on guests and must not require or accept any extra charge for daytime visits or overnight accommodation of guests.
- 3) 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 a tenancy. Disputes regarding the notice may be resolved through dispute resolution under the Residential Tenancy Act.

The tenant rents a two bedroom suite, occupied by her baby and her. It is reasonable that someone else might occupy the second bedroom, whether it be a relative or a friend or someone else.

It is certainly not uncommon that a person who has extra room in a rental unit finds a “roommate” to share the accommodation with and to help with the rent. In such a circumstance the roommate does not automatically become a tenant nor is the tenant considered to be subletting the rental unit.

The *Residential Tenancy Act* (the “Act”) defines “tenancy” and “tenancy agreement” as:

“tenancy” means a tenant's right to possession of a rental unit under a tenancy agreement;

“tenancy agreement” means an agreement, whether written or oral, express or implied, between a landlord and a tenant respecting possession of a rental unit, use of common areas and services and facilities, and includes a licence to occupy a rental unit;

“Rental Unit” is defined as:

“rental unit” means living accommodation rented or intended to be rented to a tenant

The tenant in this case appears to be granting a license or permission for another to use a bedroom in her suite on a temporary basis and for a fee. She does not appear to be granting a right to possess the entire rental unit.

Her use of the rental unit is similar to that of a tenant acquiring a roommate, but with an ever changing list of roommates. The landlord has not argued or shown that this is somehow detrimental or threatening to her rights.

It may be that the tenant's use of her suite is contrary to some legislation governing such temporary accommodation but that has not been shown. There is no proof that the tenant has engaged in any “illegal” activity.

In result, the landlord has not shown that the tenant's use of her second bedroom as an “AirBnB” accommodation is in violation of the law or the tenancy agreement. I dismiss this ground for eviction.

In regard to the actions of the “boyfriend,” the father of the tenant's son, the landlord's evidence, particularly the photo evidence confirms that he had been sleeping around the building and using the carport area as a place to store and work on his belongings.

It is not clear that he was doing so with the tenant's permission and indeed the fact that he was sleeping outside would suggest he was not permitted into the rental unit. The fact that the tenant now has a form of restraining order against him also supports this view.

The man's actions were clearly a cause for the landlord to be disturbed. The tenant was warned in the May 26th letter and I find that she has taken reasonable steps to prevent a reoccurrence. I dismiss this ground for eviction.

Conclusion

The tenant's application to cancel the one month Notice to End Tenancy dated June 16, 2015 is allowed. The Notice is hereby cancelled. The remainder of the tenant's application is dismissed.

The landlord's application for an order of possession is dismissed.

I decline to grant recovery of any filing fee.

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: August 27, 2015

Residential Tenancy Branch

