



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC

Introduction

This hearing dealt with an Application for Dispute Resolution by the tenant filed under the Residential Tenancy Act, (the “Act”), to cancel a 1 Month Notice to End Tenancy for Cause (the “Notice”) issued on July 28 2015.

Both parties appeared, gave testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions at the hearing.

In a case where a tenant has applied to cancel a Notice, Rule 11.1 of the Residential Tenancy Branch Rules of Procedure require the landlord to provide their evidence submission first, as the landlord has the burden of proving cause sufficient to terminate the tenancy for the reasons given on the Notice.

I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure. I refer only to the relevant facts and issues in this decision.

Issues to be Decided

Should the Notice issued on July 28, 2015, be cancelled?

Background and Evidence

The tenancy began in 2011. Current rent in the amount of \$1,500.00 was payable on the first of each month. The tenant paid a security deposit of \$737.50. The rental unit is a two bedroom unit.

The parties agreed that the Notice was served on the tenant indicating that the tenant is required to vacate the rental unit on August 31, 2015.

The reason stated in the Notice was that the tenant has:

- Assigned or sublet the rental unit without the landlord's consent; and
- Allowed an unreasonable number of occupants in the unit.

The landlord testified that the tenant currently has another person residing in the rental unit which they are required to obtain their prior written permission to sublet and is an unreasonable amount of occupants in the unit.

The landlord testified that there have also been two prior occupants who they believed resided in the rental unit. The landlord was not able to provide any dates or times or any specific details.

The tenant testified that when they rented the unit in 2011, it was based on two people living in the rental unit. The tenant stated that although they have requested several time a copy of their tenancy agreement, a copy has not been provided. The tenant stated that their original roommate moved out of the rental unit and they obtained a new roommate to help pay the rent.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

How to end a tenancy is defined in Part 4 of the Act. Section 47(1) of the Act a landlord may end a tenancy by giving notice to end the tenancy. A Notice issued under this section of the Act must comply with section 52 of the Act – Form and content.

Upon my review of the Notice, I find the Notice complies with the requirements of section 52 of the Act.

I have considered all of the oral submissions submitted at this hearing, I find that the landlord has not provided sufficient evidence to show that the tenant has:

- Assigned or sublet the rental unit without the landlord's consent; and
- Allowed an unreasonable number of occupants in the unit.

In this case, the tenant has not assigned or sublet the rental unit, as the tenant lives in the rental unit with a roommate. A sublet is a lease given by the tenant of residential premises to a third person and the tenant moves out. Therefore, I find the landlord has failed to prove the tenant has breached the Act, by assigning or subletting the rental unit.

The parties agreed that there is an occupant living in the rental unit with the tenant. The evidence of the landlord was that the tenant did not obtain prior written permission of

the landlord to have an occupant move in to the rental unit. The evidence of the tenant was when they rented the premises in 2011, it was based on two people living in the rental unit and when their co-tenant vacated they obtained a roommate.

In this case, the landlord has provided no evidence that their tenancy agreement provides a clause that only one person can live in the rental unit or that all occupants living in the rental unit must be preapproved by the landlord.

Further, I find that it is not unreasonable for two people to live in the rental unit since there are two bedrooms and the original tenancy was based on two tenants. I find the landlord has failed to prove a violation of the Act or the tenancy agreement, by the tenant. Therefore, I find the landlord has failed to prove the tenant has allowed an unreasonable number of occupants in the unit.

Therefore, the Notice issued on July 28, 2015, is cancelled and has no force or effect. The tenancy will continue until legally ended in accordance with the Act.

Conclusion

The tenant's application to cancel the Notice, issued on July 28, 2015, is granted.

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: October 15, 2015

Residential Tenancy Branch

