



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC AS FF

Introduction

This hearing dealt with the tenant's application to cancel a notice to end tenancy for cause, as well as for an order allowing the tenant to assign or sublet. The tenant and two landlords participated in the teleconference hearing.

At the outset of the hearing, each party confirmed that they had received the other party's evidence. The parties were given full opportunity to give affirmed testimony and present their evidence. I have reviewed all testimony and other evidence. However, in this decision I only describe the evidence relevant to the issues and findings in this matter.

Issue(s) to be Decided

Is the notice to end tenancy for cause valid?

Should I order the landlord to allow the tenant to assign or sublet?

Background and Evidence

The tenant began occupying the rental unit approximately nine years ago. On May 1, 2015, new owners took possession of the property and took over as landlords.

On September 18, 2015 the landlord served the tenant with a notice to end tenancy for cause. The notice indicated that the reasons for ending the tenancy were as follows:

- 1) there are an unreasonable number of occupants in the rental unit;
- 2) the tenant has unreasonably disturbed another occupant;
- 3) the tenant has put the landlord's property at significant risk; and
- 4) the tenant has assigned or sublet without the landlord's written consent.

Landlord's Evidence

The landlord stated that they signed an agreement with the tenant not to sublet, but the tenant did sublet to two different people, KH and NS. The landlord stated that their insurance does not allow for subletting, and therefore if the tenant sublets, it puts the landlord's property at significant risk.

The landlord stated that the tenant significantly disturbed another tenant of the landlord who lives on the same property, when her dog was barking day and night.

Tenant's Evidence

The tenant stated that she did not sublet. The tenant stated that her agreement with the landlord allows for two adults to reside in the rental unit. The tenant stated that she has no one else living in the rental unit but herself. The tenant stated that she did have KH staying with her for a period of time but the landlord was aware that KH was there. The tenant stated that a friend of hers, NS, stayed on her couch a few times when visiting. The tenant stated that NS called the landlord and asked if she could stay in the rental unit and the landlord said no, and that was it.

In regard to her dog barking, the tenant stated that she has resolved this issue with her neighbour and it is no longer an issue.

Analysis

The notice to end tenancy for cause dated September 18, 2015 is not valid. The landlord failed to provide sufficient evidence to establish that there were too many occupants in the unit; that the tenant had sublet and therefore put the property at significant risk; or that the tenant unreasonably disturbed another occupant.

An assignment occurs when the tenant assigns their tenancy over to another party, who takes over the tenancy. A sublet occurs when, in a fixed-term tenancy, the tenant enters into a sub-lease that is of a fixed term shorter by at least one day than the original fixed-term tenancy so that the original tenant has a reversionary interest in the rental unit. Based on the evidence before me, I find that no assignment or sublet has occurred in this case. KH and NS may have merely been guests of the tenant, or they may have remained in the rental unit for such a period of time that they were considered occupants, in a roommate-type arrangement; however, the written agreement between the landlord and the tenant allows for two occupants in the rental unit and there is insufficient evidence to show that KH and NS both became occupants and resided with the tenant at the same time, such that there were three occupants in the rental unit at one time.

The landlord did not provide sufficient evidence to establish that the tenant's dog unreasonably disturbed another occupant on the rental property. When a tenant complains about another tenant, the landlord has an obligation to properly investigate the complaint, and determine that it is a valid complaint. In any case, the tenant has stated that any problem between her and the neighbour has been resolved.

There was no evidence before me that the tenant had assigned or sublet the unit, or that the tenant had asked for consent to assign or sublet and the landlord unreasonably refused. It is therefore not necessary for me to consider this portion of the tenant's application.

Conclusion

The notice to end tenancy for cause dated September 18, 2015, is cancelled. The tenancy will continue until it ends in accordance with the Act.

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: November 20, 2015

Residential Tenancy Branch

