



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes DRI, CNC, O, FF

Introduction

This hearing dealt with the tenant's Application for Dispute Resolution seeking to cancel a notice to end tenancy and to dispute an additional rent increase.

The hearing was conducted via teleconference and was attended by the tenant; the landlords and their agent.

At the outset of the hearing the tenant clarified that he was also seeking compensation for lost wages to pursue this Application. I note that the tenant had included this as a detail to his dispute, however he did not provide, in the Application, any indication of the amount of his claim. As such, I have not considered this claim in this decision.

During the hearing the landlord requested an order of possession should the tenant be unsuccessful in his Application for Dispute Resolution.

Issue(s) to be Decided

The issues to be decided are whether the tenant is entitled to cancel a 1 Month Notice to End Tenancy for Cause; to cancel an additional rent increase; and to recover the filing fee from the landlord for the cost of the Application for Dispute Resolution, pursuant to Sections 40, 47, 67, and 72 of the *Residential Tenancy Act (Act)*.

Should the tenant be unsuccessful in seeking to cancel the 1 Month Notice to End Tenancy for Cause it must also be decided if the landlord is entitled to an order of possession pursuant to Section 55(1) of the *Act*.

Background and Evidence

The landlord submitted into evidence a copy of a tenancy agreement signed by the parties on November 8, 2012 for an 11 month and 1 day fixed term tenancy beginning on December 1, 2012 that converted to a month to month tenancy on November 2, 2013 for a monthly rent of \$770.00 plus $\frac{1}{4}$ of the hydro costs with a security deposit of \$385.00 paid.

The parties also agree the landlord issued a Notice of Rent Increase that became effective December 1, 2015 increasing the rent to \$789.00. This rent increase is not the subject of the tenant's dispute.

The tenancy agreement included a 1 page addendum with 12 additional terms also signed by both parties. One of these clauses states: "Tenancy agreement includes the occupancy of the tenant and his daughter only. Should this change, Tenant and Landlord will form a new tenancy agreement and rent will be adjusted accordingly."
[reproduced as written]

The landlord submits that the tenant has his girlfriend and her daughter staying with him on a regular basis. He states that he believed this to be a short term situation but that is has now been ongoing for 9 months.

The parties agreed, in the hearing, that the tenant had verbally agreed that he would pay an additional \$30.00 per month. The parties also agreed that the tenant had paid this amount for the month of August 2015 but that he has not paid it since and that in September 2015 the tenant paid the landlord \$30.00 less than the rental amount to recover the August \$30.00 payment. The landlord submits that the additional charge is not for rent but rather for the increase in utility costs associated with more people in the rental unit.

The tenant submitted that he only agreed because he does not like confrontation and that after he agreed to this additional charge he inquired with the Residential Tenancy Branch and was told the landlord could not charge any additional amounts for guests.

The tenant also testified that his girlfriend does not live in the rental unit but that she has her own home in another community. He stated that his girlfriend stays in the rental unit, on average, Wednesdays to Sundays and goes to her other home for Mondays and Tuesdays. He also submits that his girlfriend's daughter stays only 1 or 2 times per month for the weekend. The tenant also stated that his own daughter only lives with him Thursdays to Saturdays.

The landlord submits that the rental unit is 550 square feet consisting of 1 bedroom. The landlord feels that 4 people occupying the rental unit is an unreasonable number of occupants.

The tenant submits that his girlfriend has her own home in another community is only a guest in the rental unit. He also submits that there have been only a few occasions when he, his daughter; his girlfriend and her daughter have been staying in the rental unit.

Both parties submitted into evidence a copy of a 1 Month Notice to End Tenancy for Cause issued by the landlord on September 28, 2015 with an effective vacancy date of November 1, 2015 citing the tenant has allowed an unreasonable number of occupants

in the unit. The tenant submits, in his Application for Dispute Resolution, he received this notice on September 28, 2015.

Analysis

Guest is defined in The Canadian Oxford Dictionary as “a person visiting another’s house or invited to have a meal etc..” The Dictionary also defines visiting as residing temporarily with or at a location and an occupant as a person who occupies, resides in or is in a place.

Based on the tenant’s testimony I find that his girlfriend resides on an ongoing and regular basis in the rental unit for as much as 70% of the time. As such, I find that she is not a guest who is temporarily residing or visiting the rental unit, but rather an occupant.

Section 40 of the *Act* states that a rent increase does not include an increase in rent that is for one or more additional occupants and is authorized under the tenancy agreement by a term referred to in Section 13(2)(f)(iv) of the *Act*. Section 13(2)(f)(iv) states: “the amount of rent payable for a specified period, and, if the rent varies with the number of occupants, the amount by which it varies.

While the tenancy agreement does provide for an increased amount of rent payable in the event that there are additional occupants it does provide an obligation for the tenant to discuss a new tenancy agreement should there be occupants in addition to himself and his daughter.

In the case of verbal agreements, I find that where terms are clear and both the landlord and tenant agree on the interpretation, there is no reason why such terms cannot be enforced. However when the parties disagree with what was agreed-upon, the verbal terms, by their nature, are virtually impossible for a third party to interpret when trying to resolve disputes.

From the testimony of both parties I find the parties entered into a verbal agreement that required the tenant to pay an additional \$30.00 per month as long as his girlfriend was staying with him. As such, I find the parties had an enforceable agreement despite the tenant’s change of mind.

I also find that this is not a rent increase pursuant to Section 40 and as such the landlord is allowed to charge this additional amount.

Section 47 of the *Act* allows a landlord to end a tenancy by giving notice to end the tenancy if there are an unreasonable number of occupants in a rental unit. In addition, I note that the clause in the tenancy agreement addendum that specifically define the tenancy as including the tenant and his daughter.

As such, I find the tenancy agreement and addendum clearly outlined for both parties that the number of occupants during the tenancy would be 2 (the tenant and his daughter). As I have found the tenant's girlfriend to be another occupant I find the tenant has exceeded the number of occupants agreed upon and the landlord is justified in ending the tenancy for an unreasonable number of occupants.

I find the 1 Month Notice to End Tenancy for Cause issued on September 28, 2015 to be a valid and enforceable notice and the tenant must vacate the rental unit.

Despite this, I note that should both parties wish to continue the tenancy under new parameters based on the findings in this decision nothing prevents them from negotiating a new tenancy agreement.

Section 55(1) of the *Act* states that if a tenant applies to dispute a landlord's notice to end tenancy and their Application for Dispute Resolution is dismissed or the landlord's notice is upheld and the landlord request one an order of possession must be granted to the landlord.

Conclusion

Based on the above, I dismiss the tenant's Application for Dispute Resolution in its entirety.

I find the landlord is entitled to an order of possession effective **December 31, 2015 after service on the tenant, pursuant to Section 55(1)**. This order must be served on the tenant. If the tenant fails to comply with this order the landlord may file the order with the Supreme Court of British Columbia and be enforced as an order of that Court.

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: December 02, 2015

Residential Tenancy Branch

