



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding WAL-DEN INVESTMENTS
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes cnc, cne, olc

Introduction

The tenant has applied for resolution of a dispute in the tenancy at the above noted address, and requests an order to cancel a One Month Notice to End Tenancy dated November 27, 2015.

Both parties attended the hearing, and there are no issues as to the service of the One Month Notice, or of the tenant's application..

Issue(s) to be decided

Should the Notice to End Tenancy be cancelled, or has the landlord established grounds to end this tenancy, and be issued an order of Possession?

Background and Evidence

This one year, fixed term tenancy began on or before June 1, 2015. The monthly rent is \$790.00, and all rent including January rent has been paid and accepted by the landlord. A One Month Notice to End Tenancy was given to the tenant November 27, 2015, on two grounds:

- the tenant or a person permitted on the property by the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord;
- the tenant has allowed an unreasonable number of occupants in the unit/suite.

The landlord testified that this tenancy was initially to involve two tenants, but was changed and only this tenant signed the agreement. An addendum to the tenancy agreement specifically requires that the landlord approve of any additional occupants in the premises. In fact there is another female guest living with the tenant, and no approval for this guest was ever sought, or given.

The landlord further testified that early in the tenancy he had warned the tenant about excessive noise. He provided a written warning to the tenant on August 9. After a written complaint from another tenant about late night noise and abusive language, he posted a further written warning on the tenant's door, on October 24, 2015. Upon learning of the second occupant, he served the tenant with the One Month Notice.

The tenant testified that initially her boyfriend was to be a co-tenant, but he was with her only briefly, and never signed the tenancy agreement. She agrees to signing the addendum, but failed to read it carefully. She does not dispute that there is now a second occupant in the premises. She acknowledges receiving the warning on August 9, and apologized and resolved that issue. She denies receiving verbal complaints since, or the written complaint on October 26, 2015.

Analysis

With respect to the contention that there are an unreasonable number of occupants in the premises, I note that the initial agreement as prepared by the landlord contemplated a second occupant. Although the tenant's boyfriend never signed the agreement, and never became a formal co-tenant, the fact that the agreement named him, suggests that the premises was capable of housing more than one occupant, and that the landlord was initially willing to permit a co-tenant. As such, it cannot be said that two occupants in the premises is an unreasonable number for this unit. The landlord's argument that the addendum does not permit another occupant is valid, but the proper response of the landlord would have been to provide a notice to the tenant that she was in breach of a written material term of the tenancy agreement, and permit a reasonable period to rectify the breach. No such notice, or opportunity to rectify was given in this case. I therefore find the landlord has failed to prove cause to end the tenancy in this regard.

With respect to the issue of unreasonable disturbance, I accept that the tenant received verbal warnings about noise early in the tenancy, and received a written notice in August. I also accept the landlord's testimony that he received a complaint from another tenant by email, but I note that the email itself is an unsigned document, is not sworn as true, is not in affidavit form, and is not substantiated or confirmed as true through testimony at this hearing by the author himself. As such, I must assign less weight to this evidence than if the complainant had provided personal testimony under oath. I accept the landlord's subsequent warning was posted on the tenant's door, but it is not proven that she actually received this warning. Given the former warnings, I accept there have been prior incidents of disturbances caused by the tenant or guests, but I accept the tenant's testimony that former complaints were dealt with and resolved. Accordingly, while past disturbances are proven, under the circumstances it has not been demonstrated on a balance of probabilities that these have been unreasonably disturbing, as is required to end the tenancy. I therefore find the landlord has failed to prove cause to end the tenancy in this regard.

The landlord bears the burden of proof to demonstrate cause to end a tenancy, and in this case, the proof is insufficient. Accordingly, I order that the subject One Month Notice be cancelled. The tenancy shall continue.

Conclusion

The tenancy continues.

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: January 26, 2016

Residential Tenancy Branch

