



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, DRI, FF

Introduction

This is an application brought by the tenant(s) requesting an Order canceling a Notice to End Tenancy that was given for cause, disputing a rent increase, and requesting recovery of the filing fee.

Some documentary evidence and written arguments have been submitted by the parties prior to the hearing. I have thoroughly reviewed all relevant submissions.

I also gave the parties the opportunity to give their evidence orally and the parties were given the opportunity to ask questions of the other parties.

The parties were affirmed

Issue(s) to be Decided

The issues are whether or not the landlord is allowed to raise the rent, and whether or not to cancel or uphold a Notice to End Tenancy that's been given for cause.

Background and Evidence

All parties agree that on December 7, 2015 the tenants were served with a one-month Notice to End Tenancy giving the following reasons for ending the tenancy:

- Tenant has allowed an unreasonable number of occupants in the unit/site
- Breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so
- Tenant has assigned or sublet the rental unit/site without the landlords written consent

All parties also agree that there is no written tenancy agreement, and there was no discussion of material terms at the beginning of the tenancy.

The Landlord testified that the tenants moved in on July 1 and at that time they asked if their stepdaughter would be allowed to move in and were told that that would be allowed.

The landlord further testified that about two weeks into the tenancy a truck showed up at the rental unit every night and there was obviously somebody else living in the rental unit.

The landlord further testified in August another truck showed up at the rental unit and it appeared someone else was then living at the rental unit as well, and now, as of October 31, 2015, there is another person living in the rental unit on a full-time basis.

The Landlord further testified that she does not know who this person is and that no permission was ever given to the tenants to have another person move into the rental unit. She therefore approach the tenants and requested that they pay extra rent if they wanted to have this extra person in the unit, however no agreement was ever reached on any extra rent.

The landlord further testified that since she had never agreed to have an extra person in the rental unit she served the tenants with a breach letter stating they were breaching a material term of the tenancy agreement and requested that the person leave the rental unit on or before December 4, 2015, and when the tenants failed to comply with that request, a one-month Notice to End Tenancy was delivered on December 7, 2015.

The landlord is therefore requesting that the Notice to End Tenancy be upheld and that an Order of Possession be issued.

The tenant testified that he is not subletting a room to anyone; he simply has a friend living with them who had fallen on hard times. That friend is staying in their spare bedroom and shares the house with them, without paying any rent.

The tenant further testified that the other two people mentioned by the landlord were only short-term guests and were never actually living in the rental unit.

The tenant further testified that, at the beginning of the tenancy, there was absolutely no discussion with the landlord on the number of occupants allowed to live in the rental unit nor were there any discussions about material terms of the tenancy agreement.

The tenant further testified that he did not request consent from the landlord to have another occupant live with them as he does not believe he is required to.

The tenant further testified that the landlord did ask them for extra rent because of the other occupant in the rental unit, however as stated previously there is no tenancy agreement and there was never any agreement to pay extra rent for extra occupants.

The tenant is therefore requesting that this Notice to End Tenancy be canceled, that any request for an increase rent be denied, and is requesting recovery of his filing fee.

Analysis

First of all deal with the request to deny any rent increase. The landlord can only raise the rent for an additional occupant if there is a clause in the tenancy agreement that states that rent will be increased for an additional occupant, pursuant to section 13(2)(iv) of the Residential Tenancy Act which reads:

13 (1) A landlord must prepare in writing every tenancy agreement entered into on or after January 1, 2004.

(2) A tenancy agreement must comply with any requirements prescribed in the regulations and must set out all of the following:

(iv) 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;

In this case there is no tenancy agreement, and therefore there was never any agreement that rent would increase with the number of occupants and therefore the landlord is not able to raise the rent because another occupant is living in the rental unit.

Secondly I will deal with the claim of an unreasonable number of occupants in the rental unit.

In this case there are presently three people living in a two-bedroom rental unit in which one couple shares one bedroom and the new occupant is using the other bedroom. I fail to see how this is an unreasonable number of occupants especially since the landlord had stated that she would have allowed the third person (the tenant stepdaughter) to live in the rental unit which would have been the same number of people. Further, the fact that the landlord was willing to allow the third occupant to stay in the rental unit if

the tenants paid more rent, also indicates to me that the landlord does not consider the number of people in the rental unit to be unreasonable.

It is my decision therefore that the landlord has not shown that there are an unreasonable number of occupants in the rental unit.

Thirdly with regards to the claim of a breach of a material term of the tenancy agreement, the parties have testified that there was no discussion of material terms at the beginning of the tenancy and the tenants has testified there wasn't even any discussion about the number of occupants allowed in the rental unit.

Residential tenancy policy guideline number eight states:

A material term is a term that the parties both agree is so important that the most trivial breach of that term gives the other party the right to end the agreement.

In this case it is obvious that both parties did not agree that the number of occupants was a material term of the tenancy agreement, because both the landlord and the tenant have testified that there was no discussion of material terms of the tenancy agreement.

Further, since there is no tenancy agreement limiting the number of occupants in the rental unit there was no requirement for the tenants to request the landlords permission to bring in a third occupant.

It is my decision therefore that the landlord has not shown that the tenants have breached a material term of the tenancy agreement.

And finally with regards to the claim that the tenants have sublet the rental unit without permission, it is my finding that there is no evidence that the tenants have sublet the unit or a portion of the unit to the new occupant. The tenants have testified that they are not collecting any rent whatsoever from the new occupant of the rental unit, and that they have simply allowed him to live there, to assist him during hard times.

It is my decision therefore that the landlord has not shown that the tenants have assigned or sublet the rental unit without the landlord's permission.

Having disallowed all three reasons the landlord has given for ending the tenancy, I hereby Order that the 1 month Notice to End Tenancy dated December 7, 2015 is canceled and this tenancy continues.

I further Order that the landlord bear the \$50.00 cost of the filing fee.

Conclusion

The landlord's Notice to End Tenancy is canceled and this tenancy continues.

The landlord does not have the right to increase the rent because of a new occupant the rental unit.

I have issued an Order for the landlord to pay \$50.00 to the tenants.

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: February 02, 2016

Residential Tenancy Branch

