



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding BALFOUR PROPERTIES LIMITED
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes: CNC, FF

Introduction

This hearing dealt with an application by the tenant for an order to set aside a notice to end tenancy for cause and for the recovery of the filing fee. Both parties attended the hearing and had opportunity to be heard. The parties acknowledged receipt of evidence submitted by the other and gave affirmed testimony.

Issue to be Decided

Does the landlord have grounds to end this tenancy? Is the tenant entitled to the recovery of the filing fee?

Background and Evidence

The tenancy began on March 01, 2011. The current monthly rent is \$1,475.00 payable on the first of each month. A copy of the rental agreement was filed into evidence.

The tenancy agreement signed on February 03, 2011, allows for the tenant to have a roommate. Terms 1 and 2 of the tenancy agreement state as follows:

1. *There shall be only the above named KSK and roommate, PC in occupancy of the Premises.*
2. *Tenant agrees that, if at any time, a change of roommate is requires, the Tenant will not allow occupancy of any proposed roommate until formal application for proposed roommate has been submitted to and approved by the Landlord.*

The landlord stated that on or about January 18, 2016, he found out that the tenant had advertised for a roommate. On January 20, 2016, the landlord served the tenant with a one month notice to end tenancy for cause. The effective date of the notice is February 29, 2016. The reason for the notice is "*Tenant has assigned or sublet the rental unit/site without landlord's written consent*"

The landlord stated that he did not know whether the tenant had a roommate in occupancy at the time he served the notice and also at the time of the hearing. The tenant agreed that he had advertised for a roommate but stated that he had not found one and did not have a roommate at the time of the hearing.

The landlord stated that he did not want the tenant profiting from rent charged to a roommate but agreed that the tenancy agreement does not allow for the landlord's input into the amount of rent charged by the tenant to the roommate.

Analysis

In order to support the notice to end tenancy, the landlord must prove the ground alleged, namely that *Tenant has assigned or sublet the rental unit/site without landlord's written consent*". Based on the testimony of both parties, I find that the tenant has not assigned or sublet the rental unit but was looking for a roommate by advertising online. The tenancy agreement allows the tenant to have a roommate that is approved of by the landlord.

Since the tenant has not contravened the terms of the tenant agreement, I find that the landlord had no reason to serve the tenant with a notice to end tenancy. I therefore allow the tenant's application and set aside the landlord's notice to end tenancy dated January 20, 2016. As a result, the tenancy shall continue in accordance with its original terms.

Conclusion

The notice to end tenancy is set aside and the tenancy will continue.

The tenant has proven his case and may make a onetime deduction of \$100.00 off a future rent.

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: March 16, 2016

Residential Tenancy Branch

