



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, OLC, FF

Introduction

This was a hearing with respect to the tenant's application to cancel a one month Notice to End Tenancy for cause and for an order that the landlord comply with the Act, Regulation or tenancy agreement. The hearing was conducted by conference call. The landlord and the tenant submitted documentary evidence and provided testimony at the hearing. The tenant's intended witness was available, but I did not hear his testimony, because he was present primarily as a support person and his evidence would have been limited to character evidence, not evidence as to the facts of the tenancy.

Issue(s) to be Decided

Should the Notice to End Tenancy dated February 24, 2016 be cancelled?
Should the landlord be ordered to comply with the Act, Regulation or tenancy agreement?

Background and Evidence

The rental unit is a two bedroom upper suite in the landlord's house in Maple Ridge. The tenancy began October 1, 2015 for a one year term and thereafter on a month to month basis. Rent in the amount of \$1,450.00 is payable on the first of each month. The tenant paid a security deposit of \$725.00 and a pet deposit of \$725.00 at the start of the tenancy.

The landlord served the tenant with a one month Notice to End Tenancy dated February 24, 2016. The Notice required the tenant to move out of the rental unit by April 1, 2016. The stated reasons for ending the tenancy were that the tenant has allowed an unreasonable number of occupants in the rental unit; that she has significantly interfered with or unreasonably disturbed another occupant or the landlord and that she has breached a material term of the tenancy agreement that was not corrected within a

reasonable time after written notice to do so. The tenant applied to cancel the Notice to End Tenancy on March 1, 2016.

The landlord testified at the hearing that there are two rental units in the property. He said that the downstairs tenants moved out of the lower suite because of the tenant's conduct. The landlord referred to a letter written by the tenants of the lower suite after they moved out on February 24, 2016. In the letter the former occupants complained about the tenant's behaviour and an issue with her cat who disturbed them by clawing at the door separating the two rental units. The former occupants also said the tenant made numerous unfounded complaints about their use of the shower and dishwasher. They said in the letter that they moved out a month early because of their difficulties with the tenant. They said that they reported to the landlord the fact that the tenant had another person living with her in the rental unit.

The landlord testified that the tenant had an occupant living with her in the rental unit without his permission and contrary to the tenancy agreement. The landlord referred to several provisions in his tenancy agreement. The addendum to the tenancy agreement contained the following provisions:

16. No subletting is allowed.
19. Visitors and friends may stay for a period no longer than two weeks without written permission of the Landlord. Any excessive disturbances to neighbours such as loud parties etc. resulting in complaints to Landlord, will result in termination of tenancy.
24. All articles stored on the property are done so at the risk of the Tenant, with no responsibility to the Landlord no matter what the cause. If tenants are causing damages to the premises, are too dirty and are degrading the premises, have constant visitors or have people not listed on the contract habitually staying overnight, the landlord may give tenants and eviction notice.

The landlord gave the tenant a form of written warning dated February 19, 2016. The warning alleged that the tenant breached a material term of the tenancy agreement. The warning referred to sections 19 and 24 of the addendum. The warning said that the tenant has 24 hours to correct the tenancy issue or she may be evicted.

The tenant disputed the landlord's evidence. She denied being the cause of the downstairs occupants' decision to move. The tenant said that an issue arose with the

downstairs tenants because both she and the downstairs tenants had a cat. The two cats were aware of each other's presence and they would scratch at the common door separating the two suites. She said the situation was resolved when the downstairs tenants blocked the bottom of the door with cardboard. The tenant provided documents to show that the downstairs tenants moved from the rental property to Calgary, Alberta and did not move because of a dispute with her.

The tenant testified that she is a single woman and she rented the unit because it has two bedrooms. She said that she has furnished the second bedroom so her mother and her husband can stay with her when they come to visit. The tenant testified that she has a friend who is currently staying with her in the rental unit. He is a retired police officer. She agreed to let him stay in her second bedroom. At the hearing the tenant said that he will likely be moving out of the rental unit sometime in May.

Analysis

The *Residential Tenancy Act* contains provisions with respect to assignment and subletting. Section 34 of the Act provides:

Assignment and subletting

34 (1) Unless the landlord consents in writing, a tenant must not assign a tenancy agreement or sublet a rental unit.

(2) If a fixed term tenancy agreement is for 6 months or more, the landlord must not unreasonably withhold the consent required under subsection (1).

(3) A landlord must not charge a tenant anything for considering, investigating or consenting to an assignment or sublease under this section.

Section 12 of the *Residential Tenancy Act* also provides that the standard terms set out in the Schedule to the Residential Tenancy Regulation form part of every tenancy agreement. Section 14 (1) of the *Act* provides that a tenancy agreement may not be amended to change or remove a standard term. The standard terms regarding visitors and guests provides that:

Occupants and guests

- 9 (1) The landlord must not stop the tenant from having guests under reasonable circumstances in the rental unit.
- (2) The landlord must not impose restrictions on guests and must not require or accept any extra charge for daytime visits or overnight accommodation of guests.
- (3) If the number of occupants in the rental unit is unreasonable, the landlord may discuss the issue with the tenant and may serve a notice to end a tenancy. Disputes regarding the notice may be resolved by applying for dispute resolution under the *Residential Tenancy Act*.

To the extent that the provisions in the tenancy agreement and addendum conflict with the *Residential Tenancy Act* and the Residential Tenancy Regulation, they are void and unenforceable. This applies to the landlord's prohibition against subletting and as well to the restrictions with respect to visitors and guests. The standard terms contain a provision with respect to ending a tenancy if there are an unreasonable number of occupants. The landlord contended that the tenant has an unreasonable number of occupants because there is a second occupant in the rental unit not approved by him. The occupancy of a two bedroom rental unit by two people does not constitute an unreasonable number of occupants and I find that the landlord has not established cause to end the tenancy because the tenant has a guest staying with her.

The landlord claimed that the downstairs tenants moved out because of the tenant's behaviour and this constitutes cause to end the tenancy. The tenant was not notified that there was a complaint before the downstairs tenants moved out. The tenant provided evidence that downstairs occupants moved out of the province, from which I infer that they were not motivated to move solely due to conflicts with the tenant. I find that the landlord has not proven on a balance of probabilities that the tenant significantly interfered with or unreasonably disturbed the occupants of the lower suite or that her conduct towards them amounted to cause for ending the tenancy.

I find that the landlord has not established that there are grounds to end the tenancy for any of the reasons stated in the Notice to End Tenancy and I therefore allow the tenant's application and order that the Notice to End Tenancy February 24, 2016 be, and is hereby cancelled. The tenancy will continue until ended in accordance with the *Residential Tenancy Act*.

In the landlord's written submissions he said that he wants the house for himself now and he has decided that he no longer needs or wants a tenant. The landlord is reminded that he signed a fixed term tenancy agreement and he is not permitted to end the tenancy for landlord's use before the expiry of the fixed term.

Conclusion

The tenant's application to cancel the Notice to End Tenancy has been granted. She is entitled to recover the \$100.00 filing fee for her application and she may deduct the said sum from a future installment of rent due to the landlord.

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: April 22, 2016

Residential Tenancy Branch