



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, 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.

A substantial amount of documentary evidence and written arguments has 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.

All parties were affirmed.

Issue(s) to be Decided

The issue is whether or not to cancel or uphold a Notice to End Tenancy that was given for cause.

Background and Evidence

The parties agree that on October 21, 2016 the landlord posted a 1 month Notice to End Tenancy on the tenants door stating the following reason:

- Tenant has assigned or sublet the rental unit/site without landlord's written consent.

The landlord testified that this rental unit was originally rented to the tenant whose initials are H.B. .

The landlord further testified that H.B. told him that she was moving to the coast and that the party whose initials are E.V. would now be renting the unit.

The landlord testified that the tenant never requested permission to sublet, nor was permission ever given to sublet the rental unit to E.V., and therefore he gave a Notice to End Tenancy.

The tenant, H.B. testified that she has not moved out of the rental unit, she is still living there at least three days a week, and is only living at the coast part-time.

The tenant also testified that the landlord has known throughout the tenancy that E.V. has been living in the rental unit with her, and in fact the utilities have been in his name throughout the tenancy.

The tenant also testified that she never told the landlord that she was moving out completely and subletting to E.V.. She further stated that she told the landlord she was moving some of her belongings to the coast, however she still has a large number of belongings in this rental unit, and, as stated previously, she is living there at least three days a week .

In response to the tenants testimony the landlord testified that the tenant did tell him she would be moving out, but would keep paying the rent, and would only be coming back once in a while to do business, but would be making the rent payments on behalf of E.V..

Analysis

It is my decision that the landlord has not met the burden of proving that the tenant has sublet this rental unit.

The landlord claims that the tenant told him she was moving out of the rental unit; however the tenant denies that claim, stating she still living in the rental unit part-time and paying the rent. The burden of proving the reasons for ending a tenancy lies with the landlord and when it is just the landlords word against that of the tenant that burden of proof is not met.

Further, it's my finding it unlikely that the landlord has not known that E.V. has been living in the rental unit for many years now, especially since utilities are in E.V.'s name.

It's my decision therefore that I will cancel the one month Notice to End Tenancy.

I also allow the applicants request for recovery of the \$100.00 filing fee.

Conclusion

I hereby order that the one month Notice to End Tenancy dated October 21, 2016 is hereby canceled and this tenancy continues.

I further order that the landlord bear the \$100.00 cost of the filing fee that was paid by the tenants, and therefore the tenants may make a one-time \$100.00 deduction from future rent payable 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: December 14, 2016

Residential Tenancy Branch