



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, FF

Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution (the "Application") made by the Tenant on October 7, 2016 to cancel a notice to end tenancy for cause and to recover the filing fee from the Landlords.

Both Landlords and the Tenant appeared for the hearing and provided affirmed testimony. The Landlords acknowledged receipt of the Tenant's Application and no issues were raised in relation to the service of the parties' evidence served prior to the hearing. The hearing process was explained to the parties and they had no questions about the proceedings. Both parties were given a full opportunity to present their evidence, make submissions to me, and cross examine the other party on the evidence provided.

Issue(s) to be Decided

- Have the Landlords provided sufficient evidence of significant interference or unreasonable disturbance in this tenancy that should end the tenancy?
- Should the notice to end tenancy for cause be cancelled?

Background and Evidence

Both parties agreed that this tenancy for the upper portion of the rental unit started on September 1, 2016 and is for a fixed term of one year due to expire on August 31, 2017. After this time the tenancy is to continue on a month to month basis. Rent is payable in the amount of \$850.00 on the first day of each month. The Tenant paid a security deposit of \$435.00 and \$850.00 as a pet damage deposit at the start of the tenancy; although the Tenant has since deducted the overpayment of the pet damage deposit through rent. The parties confirmed at the time of this hearing that the Landlords hold a total of \$850.00 in the Tenant's deposits.

The Tenant confirmed receipt of a 1 Month Notice to End Tenancy for Cause (the "1 Month Notice") on September 30, 2016. The 1 Month Notice was provided into evidence and is dated September 28, 2016 and has a vacancy date of October 31, 2016. The reason for ending the tenancy elected on page two of the 1 Month Notice is because 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 Landlords were asked to present their evidence in relation to the reason to end the tenancy detailed on the 1 Month Notice. The male Landlord testified that Tenant's boyfriend who helped her to move in became an occupant of the rental unit and continued to stay at the rental unit for 45 days. The Landlord testified that the tenancy agreement only allows for the Tenant to occupy the rental unit.

The male Landlord testified that the Tenant's boyfriend had a criminal record and when the downstairs renter in the basement portion of the rental property found this out, the basement renter provided the Landlords written notice to move out fearing for the safety of her daughter. The Landlords stated that this caused them financial loss in rent revenue. The Landlords confirmed that the Tenant's boyfriend had not done anything directly to cause their basement renter to move out but that the basement renter moved because she could not risk living close to someone who had a criminal record.

The male Landlord testified that after the tenancy started they noticed evidence that there was smoking on the rental property. The Landlord had a discussion with the Tenant about this on September 25, 2016 and followed this up with a breach letter dated September 25, 2016 which was served to the Tenant on September 27, 2016 by email. The breach letter stated in part that there was no smoking on the property and that her boyfriend was not to smoke there.

The male Landlord testified that a several days later after the Tenant was served the breach letter, they observed and took pictures of the Tenant's guests smoking on the deck of the carport attached to the rental property which was accessed through the rental unit. The female Landlord testified that the Tenant was prohibited from using the deck area of the carport although this was not expressly prohibited by the tenancy agreement. The male Landlord submitted that this was a breach of a material term of the tenancy agreement.

The Landlords confirmed that the Tenant's boyfriend had moved out in the middle of October 2016 and was no longer residing there and that there were no further issues in this tenancy at the time of this hearing. However, the Landlords want to end the tenancy

on the basis that they fear the Tenant may cause a disturbance in this tenancy and that she may breach the tenancy agreement again.

The Tenant testified that the male helping her to move in was her ex-boyfriend and that he was not an occupant of the rental unit. The Tenant testified that her ex-boyfriend was a guest who visited her often from the start of the tenancy until the middle of October 2016. The Tenant submitted that her ex-boyfriend had residence elsewhere and did not move in any furniture or his clothing which would have been indicative of him being an occupant which she denied. The Tenant stated that in any case her boyfriend is not visiting her anymore.

The female Landlord questioned the Tenant's testimony asking why was it that the Tenant had asked them if her boyfriend could move into the rental unit. The Tenant disputed this submitting that she asked the Landlord whether she needed written consent to have another person move in with her and this did not refer to her ex-boyfriend.

The Tenant stated that she was not a smoker and that her understanding of the addendum to the tenancy agreement, which simply states "No smoking permitted", was that there was to be no smoking inside the rental unit which there has not been. The Tenant testified that she did not think smoking was prohibited on the common areas which is what the Landlords had discussed with her during the September 25, 2016 conversation.

The Tenant explained that the people in the photographs smoking on the deck of the car port were her children and that they should not have been doing this and was not aware that this had occurred. The Tenant stated that she had spoken to her children and informed them that they are not to smoke on the deck of the car port again. The parties confirmed that there have been no further smoking incidents apart from the ones mentioned in this hearing. The Tenant spoke directly to the Landlords in this hearing and re-assured them that she is a trusted good Tenant and there will no issues in this tenancy for which they are fearful of. The Tenant testified that she has spoken to all her guests and family members and cautioned them about smoking on the property in the future to prevent further disputes from occurring.

Analysis

In relation to the form and content of the 1 Month Notice, I find it complied with the requirements of Section 52 of the Act and that it was served to the Tenant pursuant to the Act. I accept that the Tenant received the 1 Month Notice on September 30, 2016

and applied to dispute it on October 7, 2016. Therefore, I find the Tenant made the Application within the ten day time limit stipulated by Section 47(4) of the Act.

When a landlord issues a tenant with a 1 Month Notice and it is then subsequently disputed, the landlord bears the burden of proving the reasons on the balance of probabilities. In this case, the issue I must determine is whether the Landlords have provided sufficient evidence that the Tenant has caused a **significant or unreasonable** disturbance in this tenancy that gives rise to the ending of the tenancy. As a result, I make the following findings.

Section 9(1) of the Residential Tenancy Regulation provides that a landlord cannot prohibit a tenant from having guests under reasonable circumstances. I find the Landlords provided insufficient evidence that the Tenant's alleged boyfriend was an occupant of the rental unit and that his visits to the rental unit went beyond that of a guest.

I also find the Landlords provided insufficient evidence that the Tenant's alleged boyfriend caused any interference to either the Landlords or the basement renter. I find that a decision made by the basement renter to end her tenancy on the sole basis that the Tenant's alleged boyfriend had a criminal history is not sufficient evidence for me to end this tenancy. Neither do I find that the Tenant or her guest caused an actual disturbance that led to the basement renter ending her tenancy.

With respect to the smoking issues, I acknowledge the Tenant's submission that the tenancy agreement did not make it clear exactly which areas of the common property were prohibited from smoking on. However, I also acknowledge that the Tenant's children smoked on the deck of the car port which was contrary to the follow up letter that the Tenant had been put on notice of in relation to smoking on the residential property. In balancing the evidence before me, I find that this one incident alone is not sufficient for me to conclude that this was significant in nature. I make this finding because the Landlords provided insufficient evidence of the impact the smoking by the Tenant's children had in this tenancy. I find that the Landlord's fear that a potential or future incident may arise is also not sufficient evidence for me to end this tenancy.

Based on the evidence before me, I am only able to conclude that while the Tenant is responsible for the actions and behaviour of her guests/children in this tenancy, one incident, for which the Tenant expressed remorse for, is not sufficient for me to find that the Landlords have been significantly interfered with or unreasonably disturbed.

Conclusion

The Landlords have provided insufficient evidence to prove the 1 Month Notice. Therefore, I grant the Tenant's Application to cancel the 1 Month Notice dated September 28, 2016. The tenancy will continue until it is ended in accordance with the Act.

As the Tenant has been successful in cancelling the 1 Month Notice, the Tenant may recover her \$100.00 filing fee. Pursuant to Section 72(2) (a) of the Act, the Tenant may achieve this relief by making a \$100.00 deduction from a next installment of rent. The Tenant may want to attach a copy of this Decision when making the reduced rent payment.

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 05, 2016

Residential Tenancy Branch