



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, OLC

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* ("Act") for:

- cancellation of the landlord's 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) pursuant to section 46; and
- an order requiring the landlord to comply with the Act, regulation or tenancy agreement pursuant to section 62.

Both parties attended the hearing and were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses

As both parties attended I confirmed that there were no issues with service of either the landlord's 10 Day Notice of January 2, 2017, or the tenant's application for dispute resolution dated January 4, 2017. The parties testified that they had received all filed materials including each other's evidence and there were no issues with service. Pursuant to sections 88 and 89 of the Act I find that the landlord was duly served with the tenant's application and evidence, and that the tenant was duly served with the landlord's evidence.

Issue(s) to be Decided

Should the landlord's 10 Day Notice be cancelled? If not, is the landlord entitled to an Order of Possession?

Has the landlord failed to comply with the Act, regulation or tenancy agreement and if so should they be ordered to comply?

Background and Evidence

While I have turned my mind to all the evidence and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of the tenant's claim and my findings around each are set out below.

The parties agreed on the following facts. This month to month tenancy began in December, 2016. There is a written tenancy agreement where the parties agreed to monthly rent in the amount of \$700.00 payable on the first of the month. A security deposit of \$350.00 was paid at the commencement of the tenancy and is still held by the landlord. The tenancy agreement includes a handwritten clause stating "If Additional Person starts living with you the rent will be \$300 extra." The clause is signed by both parties.

The tenant has paid \$700.00 rent for both December 2016 and January 2017. Prior to the date of the 10 Day Notice there is no evidence that the landlord put any request in writing to the tenant requesting an extra \$300.00 for either December or January.

The rental unit is the lower level of a detached home in a residential neighbourhood. The landlord testified that because the neighbourhood has experienced property crimes, they have installed security cameras on the exterior of the building to monitor activity. The cameras have been in place for several years and are plainly visible. The landlord testified that the cameras were present prior to the current tenancy. The landlord testified that the cameras are motion activated and fixed in place. The cameras are installed to record activity approaching the building and are aimed at the driveway, garage, and greenhouse on the property. The landlord testified that he reviews the recorded footage and saves portions if he notices unusual activities. The landlord said that there have been instances when recorded footage has been provided to the authorities when crimes occurred in the neighbourhood.

The landlord testified that since the start of the tenancy there has been a frequent guest visiting and staying overnight with the tenant. The landlord testified that the guest stayed overnight for more than 2/3 of the month during December and January. The landlord noticed the frequent guests when reviewing the security footage. The landlord submitted security video footage of the tenant's guest arriving in the evening and not leaving until the next morning. The landlord submits that the guest, because of the frequency and duration of his visits, should be considered an additional tenant, and as such, according to the tenancy agreement the rent increases by \$300.00 to \$1,000.00 monthly.

The landlord said that the clause was included in the tenancy agreement in contemplation of the additional utility fees that an additional tenant would cost the

landlord. The landlord submits that any guest who occupies the rental unit for over 14 days in a month should be considered an additional tenant. The landlord testified that due to the guest becoming an extra tenant the monthly rent for December and January was actually \$1,000.00 and the tenant was in arrears by \$300.00 each month for a total arrears of \$600.00 as of January 30, 2017, the date of the hearing. The parties agreed that the tenant has paid \$700.00 for each of December 2016 and January 2017.

The tenant testified that guests have stayed overnight at the rental unit. She testified that none of the guests have moved in to become residents. The tenant testified that all of her guests, including the most frequent guest, maintain their own residence and are not residing in the rental unit. She said that she does not agree to a \$300.00 increase in monthly rent as her overnight guests are not additional tenants in the rental unit. The tenant said that frequent visits should not be construed as guests becoming additional tenants.

The tenant said that she finds the landlord's surveillance and records of her guests to be an invasion of her privacy. The tenant testified that she is seeking an order that the landlord provide more privacy for herself and her guests by ceasing to record the number and frequency of her guests.

Analysis

At issue in this case is whether the landlord's video cameras on the property contravene the Act, regulation or tenancy agreement by contravening the tenant's right to quiet enjoyment of the rental unit; and the enforceability of the handwritten clause signed by the parties and the ability of the landlord to require the tenant to pay additional rent for having an additional occupant.

Analysis - Tenant's Right to Reasonable Privacy

Section 28 of the Act protects a tenant's right to quiet enjoyment of the rental unit and residential property. Section 28 provides:

28 *A tenant is entitled to quiet enjoyment including, but not limited to, rights to the following:*

(a) reasonable privacy;

(b) freedom from unreasonable disturbance;

(c) exclusive possession of the rental unit subject only to the landlord's right to enter the rental unit in accordance with section 29 [landlord's right to enter rental unit restricted];

(d) use of common areas for reasonable and lawful purposes, free from significant interference.

The landlord has testified that the security cameras were installed prior to the current tenancy and the tenant was aware of their presence when she moved in. The evidence submitted shows the cameras are aimed away from the building and record motion on the driveway or other buildings on the property. The tenant has not disputed that the cameras are aimed away from the building. The tenant argues that the very fact that cameras monitor and record visitors to the property to be an invasion of her privacy.

I find that the landlord has not interfered with the tenant's right to reasonable privacy. The landlord is acting within the scope of their duty to provide security for the tenants of the rental building. I find the level of surveillance: to monitor only the areas away from the building; to only begin recording when the motion sensors are triggered; and to only show video rather than audio recordings of any ambient conversations to be reasonable in the circumstances. Therefore, I dismiss the tenant's application for an Order that the landlord comply with the Act, regulation or tenancy agreement.

Analysis – Tenant's Application to Cancel the 10 Day Notice

Section 30 of the *Act* protects a tenant's right to have guests at the rental property and provides that the landlord must not unreasonably restrict access. Section 30 provides, in part:

30 (1) A landlord must not unreasonably restrict access to residential property by

...

(b) a person permitted on the residential property by that tenant.

Residential Tenancy Regulation 5 prohibits a landlord from charging a fee for a tenant having guests. Section 5 provides:

5 (1) A landlord must not charge a guest fee, whether or not the guest stays overnight.

In this case the parties have prepared an additional handwritten term to the tenancy agreement allowing the landlord to increase the rent by \$300.00 when an additional

tenant begins occupying the rental unit. While the *Act* provides parties to enter into additional terms, section 6 (3) of the *Act* provides that any terms agreed to by the parties must meet certain criteria, otherwise the term is not enforceable. Section 6 (3) provides:

- 6 (3)** A term of a tenancy agreement is not enforceable if
- (a) the term is inconsistent with this Act or the regulations,
 - (b) the term is unconscionable, or
 - (c) the term is not expressed in a manner that clearly communicates the rights and obligations under it.

Considering the above requirements of the Act and regulations together, I find that the additional handwritten term to be inconsistent with the Act and regulations. I find the term included in the tenancy agreement does not clearly communicate how one is to determine if an additional person has started living in the rental unit. While the landlord submits that any person staying more than 14 days in a month should be considered an additional tenant, the clause does not provide any means for determining if someone has started living in the rental unit. The tenant provided undisputed affirmed testimony that the most frequent guest who visits her continues to keep his own residence and is not residing with her.

In order for a term of a tenancy agreement to be clear there should be little ambiguity as to when the term comes into effect. The landlord, based on the security footage, argues that the monthly rent should have retroactively been raised by \$300.00 for December and January. The parties agreed that the tenant paid rent in the amount of \$700.00 for December, 2016 and January, 2017 on the first of each month. The landlord accepted the rent payment at that time. However, based on the security footage the landlord argues that the rent for each of those months was actually \$1,000.00. The landlord did not provide evidence of written notice issued to the tenant of his intention to enforce this portion of the agreement prior to issuing the 10 Day Notice. Under the landlord's interpretation of this term, even if the tenant pays the agreed upon rent of \$700.00 at the first of the month and the rent is accepted by the landlord, the tenant could be found to be in rental arrears retroactively if the landlord determines that there was an additional occupant residing in the rental unit during the previous month. I find this to be faulty reasoning.

Under these circumstances, I find that the landlord has failed to prove to the extent required that he is entitled to additional rent of \$300.00 per month. On this basis, I allow the tenant's application to cancel the landlord's 10 Day Notice.

Therefore, I find the handwritten term to be unenforceable and the landlord was not, and is not, entitled to increase the monthly rent by \$300.00.

Conclusion

The tenant's application to cancel the 10 Day Notice is allowed. The 10 Day Notice is of no continuing force or effect. This tenancy will continue with a monthly rent of \$700.00 until increased in accordance with the *Act*.

The tenant's application that the landlord comply with the Act, regulation or tenancy agreement is dismissed.

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 6, 2017

Residential Tenancy Branch