



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC

Introduction

This hearing dealt with the tenant's application pursuant to section 47 of the *Residential Tenancy Act* (the "Act") for cancellation of the landlord's 1 Month Notice to End Tenancy for Cause (the "1 Month Notice").

The tenant, the tenant's legal advocate and the landlord attended the hearing. At the outset of the hearing, each party confirmed that they had received the other party's evidence. As neither party raised any issues regarding service of the application or the evidence, I find that both parties were duly served with these documents in accordance with sections 88 and 89 of the *Act*. Both parties were given full opportunity to give affirmed testimony and present their evidence.

Issue(s) to be Decided

Should the landlord's 1 Month Notice be cancelled? If not, is the landlord entitled to an order of possession?

Background and Evidence

As per the submitted tenancy agreement and testimony of the parties, the tenancy began on July 1, 2016 on a month-to-month basis. Rent in the amount of \$600.00 is payable on the first of each month. The tenant remitted a security deposit in the amount of \$300.00 at the start of the tenancy. The tenant continues to reside in the rental unit.

The tenant acknowledged receipt of the landlord's 1 Month Notice dated January 29, 2017. The grounds to end the tenancy cited in that 1 Month Notice were;

- the tenant has allowed an unreasonable number of occupants in the unit/site
- the tenant or a person permitted on the property by the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord

Landlord

It is the landlord's position that the tenant had his adult son living with him, in the 350 square foot bachelor rental unit, which is contrary to the signed tenancy agreement that names the

tenant as the sole occupant. The landlord testified that upon review of the tenant's documentary evidence he concludes the tenant's son stayed in the rental unit approximately 18 days, between January 20, 2017 and February 11, 2017.

Additionally the landlord testified that the tenant's son has been seen trying to open doors down the hallway and this action constitutes an unreasonable disturbance to other occupants.

Tenant

While the tenant acknowledged his son stayed in the rental unit, the tenant contends he stayed as a guest and no longer than four days. In an effort to support his position the tenant provided a witness statement from his son, text messages, a vehicle repair invoice, a medical receipt, hotel receipts and an airline receipt.

The tenant presented two witnesses, the first of which testified that he "can't say for sure", but thinks the tenant's son stayed "no longer than 4 days." The second witness, who is the tenant's son, disputes moving into his father's rental unit. He testified that sometime between January 20, 2017 and February 9, 2017 he temporarily stayed with his father to attend medical appointments; however he maintained a permanent address in Prince Albert, Saskatchewan and a temporary address in Castlegar, British Columbia. The tenant's son estimates he stayed no longer than four days with his father and testified that the remainder of his stay was spent at friends or in hotels.

The tenant acknowledged an instance in which he knocked on another unit door in an attempt to locate his father's unit but contends this interaction between him and the recipient was polite and non-threatening.

Analysis

Under section 47 of the *Act*, a landlord may end a tenancy if the tenant has allowed an unreasonable number of occupants in the unit or the tenant or a person permitted on the residential property by the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord.

The onus is on the landlord to prove the reasons listed on the 1 Month Notice took place by the tenant or person permitted on the property by the tenant. The landlord provided documentary evidence in the form of a written summary of his position and evidence in the form of testimony during the hearing.

There is a distinction between guests and occupants. Although the *Act* does not define occupants, Policy Guideline #13 establishes occupants as those individuals who are not tenants, but rather individuals allowed by the tenant to move into the premises and share the rent.

Based on the above, I find the landlord has failed to establish the tenant brought any “occupants” into the rental unit. While the tenant’s son may have temporarily stayed in the unit, I find he stayed as a guest, which is allowable and cannot be restricted as per section 30 of the *Act*. For these reasons, I find the landlord has not met his onus and dismiss the 1 Month Notice on this ground.

In relation to the second ground listed on the 1 Month Notice, when one party provides testimony/evidence of the events in one way and the other party provides an equally probable but different testimony/evidence of the events, then the party making the claim has not meet the burden and the claim fails.

In this case the landlord testified that the tenant’s son had been seen trying to open other unit doors whereas the tenant’s son explained he had knocked on the wrong unit door and was redirected to his father’s unit. The landlord has provided insufficient evidence to establish any action by the tenant’s son has significantly interfered with or unreasonably disturbed another occupant or the landlord. For this reason I find the landlord has failed to prove his burden to end the tenancy on this ground.

Overall, I find the landlord has failed to meet his burden in proving the reasons behind the 1 Month Notice. Consequently, the tenant’s application to cancel the 1 Month Notice is upheld.

Conclusion

The tenant’s application to cancel the 1 Month Notice is upheld. The tenancy will continue until it is ended in accordance with the *Act*.

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 8, 2017

Residential Tenancy Branch