



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

REVIEW DECISION

Dispute Codes CNC, RP

Introduction

This hearing was convened by way of conference call in response to the tenant's application to dispute a One Month Notice to End Tenancy for Cause and an Order for the landlord to do repairs to the rental unit.

This is a review hearing that was scheduled to be heard, in part, by myself as the original Arbitrator. The landlord had applied for a review consideration of the original decision made on February 27, 2017 under the grounds of fraud. The Arbitrator who dealt with the Review Consideration ordered a review hearing to be held based on one issue contained within the One Month Notice only, as follows:

The tenant has allowed an unreasonable number of occupants in the rental unit.

Consequently this is the only issue that will be dealt with at this review hearing. This decision should be read in conjunction with the original decision.

The tenant and landlord attended the conference call hearing, and were given the opportunity to be heard, to present evidence and to make submissions under oath. The landlord and tenant provided documentary evidence to the Residential Tenancy Branch and to the other party in advance of this hearing. The parties' evidence was provided late; however, due to the short turnaround from the Review Consideration decision and the Review Hearing date I have allowed both parties evidence to be considered pursuant to the Rules of Procedure. The parties confirmed receipt of evidence. I have

reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure; however, only the evidence relevant to the issues and findings for this review hearing is described in this Decision.

Preliminary Issues

RTB Rules of Procedure 2.3 states that “if in the course of a dispute resolution proceeding, the Arbitrator determines that it is appropriate to do so, the Arbitrator may dismiss unrelated disputes contained in a single application with or without leave to reapply.” In this regard I find that not all the claims on the tenant’s application are sufficiently related to the main issue to be dealt with together. I therefore will deal with the tenant’s application to cancel the One Month Notice to End Tenancy for cause and I will not deal with the remaining section of the tenant’s claim at this hearing.

Issue(s) to be Decided

Is the tenant entitled to an Order to cancel the One Month Notice to End Tenancy for cause based on the singular reason that concerns this Review Hearing?

Background and Evidence

The parties agreed that this month to month tenancy started on September 01, 2014. Rent for this unit is \$760.00 per month due on the first of each month. The tenant paid a security deposit of \$380.00 on August 17, 2014.

The landlord testified that the tenant was served a One Month Notice to End Tenancy for cause (the Notice) in person on January 10, 2017. A copy of the Notice has been provided in documentary evidence. The Notice has an effective date of February 15, 2017 and provides the following reasons to end the tenancy:

- 1) *The tenant has allowed an unreasonable number of occupants in the unit*

- 2) *The tenant or a person permitted on the residential property by the tenant has*
- (i) Significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property,*
 - (iii) Put the landlord's property at significant risk;*

Issues # 2 (i) and (iii) were dealt with and decided at the original hearing and will not be decided again at this hearing.

This tenancy is for two occupants of the rental unit, the tenant and her child. The landlord testified that the tenant gave false evidence at the original hearing when she stated that the father of her child RB did not live in her rental unit and resided elsewhere. The landlord testified that he contacted the owner of the property that RB had stated he lived in and that owner has provided the landlord with a written statement that says that "he owns the rental unit at [address provided here] and has never rented to RB and I don't allow sub renting out rooms for third party rentals".

The landlord testified that the tenant has provided some rent receipts in her documentary evidence for this hearing but did not provide them for the last hearing. These rent receipts are in the same handwriting as the tenant's mother and it appears that she has written these rent receipts out and has put a cross where this alleged roommate of RB should sign.

The landlord testified that he knows that RB was living in the tenant's unit for the whole of January, 2017 with another man there also, as the landlord was working on the unit upstairs and saw RB at the unit each day and each morning. Another tenant also provided a log showing when RB's truck was parked at the unit each night.

The tenant's agent testified that they did not have these receipts for the first hearing as they did not know they would be required as RB does not live with the tenant. The tenant's agent actually wrote out the receipts and asked RB's roommate, who he rents a

room from, to sign them. They agreed to do this as RB had paid the rent to them for his room. The tenant's agent testified that she also knows that RB lives at the address given because she has dropped her grandson off to him at that address. On one occasion the tenant's agent was at RB's home and saw the room he was living in. She also met the owner of the property, who has written this letter to the landlord, because the owner had lost his keys to the storage room and RB gave the owner his keys to the storage room. The owner is fully aware that RB lives in the unit with the tenants there and did not appear to have a problem with RB residing in a room there. If that owner now does have a problem with his tenants subletting then that is between that owner and his tenants and not this landlord.

The tenant's agent testified that the tenant has also provided a parking violation ticket that RB received and this clearly shows his address is the other address where he resides and not the tenant's unit. This shows therefore that RB's driving licence has his address on it. The tenant's agent also referred to RB's Shaw cable bill in his name at that address and a copy of this has been provided in evidence from the tenant. The tenant has also provided a letter from RB's bank showing his previous address and that this proves that RB has never resided with the tenant as alleged by the landlord.

The landlord asked the tenant's agent where RB stayed last night. The tenant's agent responded that he stayed at the tenants unit as a guest because the tenant's agent was picking the tenant up early this morning for the hearing and he was staying at her unit to look after their child. Two nights ago the tenant's sister also stayed at the tenant's unit and as the tenant made a dinner for them she also invited RB and he stayed at her unit that night also. The tenant's agent testified that the tenant is permitted to have guests stay in her unit without restrictions from the landlord.

The landlord asked the tenant's agent whose wood was stored under the deck. The tenant's agent responded that it is the tenant's wood. The tenant was going to build a cat box but as she has got rid of her cat it is no longer required and the tenant's agent will remove it.

The landlord argued that he wanted to deal with the other issues on the Notice.

Analysis

As explained at the outset of the hearing the only issue dealt with today as ordered in the Review Consideration decision dated March 09, 2017 is the matter concerning the reason included on the Notice that the tenant has allowed an unreasonable number of occupants in her rental unit.

In this matter, the landlord has the burden of proof and must show (on a balance of probabilities) that grounds exist to end the tenancy for this reason. This means that if the landlord's evidence is contradicted by the tenant, the landlord will generally need to provide additional, corroborating evidence to satisfy the burden of proof and to establish this reason on the Notice to End Tenancy.

I have carefully considered the evidence before me and I find that the landlord has insufficient evidence to show that the tenant has allowed additional occupants to occupy the rental unit. The landlord testified that he saw the tenant's friend RB at the unit during January but only in the day and in the morning. There is insufficient evidence to show RB is a permanent occupant of the tenant's unit and not just a guest of the tenant. The landlord has provided a written log from another tenant living in the building, who kept a record of RB's vehicle at the unit; however, This evidence does not prove that RB actually resides there only that his vehicle is there. The landlord testified that he contacted the owner of the building where the tenant alleges RB lives. That owner has written a letter to state he does not know the tenant and does not allow sub rentals in his building.

The tenant has provided documentary evidence from her child's father stating the address where he lives and that he has only been a visitor at the tenant's unit and that he enjoys being an active father so does visit his son regularly and as he works

nightshifts often stays there until late. The tenant has provided a letter from a party who has stated that the tenant's child's father has rented a room from her since September 01, 2016. For the review hearing that tenant's agent referred to receipts for RB's rent at his residence signed by the tenant of that unit and testified that this shows RB rents a room from that person. The tenant's agent also referred to the parking violation ticket and the Shaw cable bill both in RB's name and both showing his address at the room he rents and not the tenant's unit.

I am satisfied with the more official documentation provided by the tenant concerning her friend RB's place of residence over that of the hand written note by the owner of that property saying he does not rent to RB and does not allow subtenants. This owner may or may not be aware that RB is subletting a room from his tenants and if that is the case then it is a matter between that owner and his tenants and has no bearing on this tenant's tenancy for her rental unit.

As the landlord has the burden of proof in this matter then without further corroborating evidence to show that this person or another male person actually resides or resided in the tenant's unit and were not just guests or frequent visitors then the burden of proof is not met.

I will however caution the tenant to ensure her child's father RB is not staying at her unit for a longer period then can be construed under the *Act* as being a guest. I also caution the landlord that he may not restrict the tenant from having guests in her unit as long as they comply with the *Act* and cannot be considered an occupant. If the parties seek further clarification on this matter I direct them to s. 9 of the Residential Tenancy Regulations which states:

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.*
- (2.1) *Despite subsection (2) of this section but subject to section 27 of the Act [terminating or restricting services or facilities], the landlord may impose reasonable restrictions on guests' use of common areas of the residential property.*
- (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.*

Conclusion

The tenant's application is allowed. The One Month Notice to End Tenancy for Cause dated January 10, 2017 is cancelled and the tenancy will continue. The original Decision is therefore confirmed, pursuant to s. 82(3) of the *Residential Tenancy 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: April 11, 2017

Residential Tenancy Branch