



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: CNC, FF

Introduction:

The Application for Dispute Resolution filed by the Tenant seeks the following:

- a. An order to cancel the one month Notice to End Tenancy dated July 31, 2017.
- b. An order disputing an illegal rent increase
- c. A monetary order in the sum of \$640.
- d. An order to keep the security deposit and/or pet damage deposit
- e. An order that the landlord comply with the Act, regulation and/or the tenancy agreement.
- f. An order to recover the cost of the filing fee.

A hearing was conducted by conference call in the presence of both parties. On the basis of the solemnly affirmed evidence presented at that hearing, a decision has been reached. All of the evidence was carefully considered.

Both parties were given a full opportunity to present evidence and make submissions. Neither party requested an adjournment or a Summons to Testify. Prior to concluding the hearing both parties acknowledged they had presented all of the relevant evidence that they wished to present.

I find that the one month Notice to End Tenancy was served on the Tenant by posting on July 31, 2017. Further I find that the Application for Dispute Resolution/Notice of Hearing was served on the landlord by mailing, by registered mail to where the landlord resides. With respect to each of the applicant's claims I find as follows:

Issues to be Decided:

The issues to be decided are as follows:

- a. Whether the tenant an order to cancel the one month Notice to End Tenancy dated July 31, 2017.
- b. Whether the tenant is entitled to an order disputing an illegal rent increase
- c. Whether the tenant is entitled to a monetary order and if so how much?
- d. Whether the tenant is entitled to an order for the return of the security deposit and/or pet damage deposit

- e. Whether the tenant is entitled to an order that the landlord comply with the Act, regulation and/or the tenancy agreement.
- f. Whether the tenant is entitled to an order to recover the cost of the filing fee.

Background and Evidence:

The tenancy began on March 1, 2017. The tenancy agreement provided that the tenant(s) would pay rent of \$680 per month payable in advance on the first day of each month. The tenant(s) paid a security deposit of \$340 at the start of the tenancy.

The landlord testified there is a written tenancy agreement. However, neither party provided a copy of that agreement.

The landlord seeks to end the tenancy based on the following:

- He testified the rental unit was rented on the basis of single occupancy.
- The breaker box is in the tenant's unit. He testified that on one occasion he texted the tenant asking her to reset the breaker. She responded saying she was at work and unable to come but her boyfriend could be there in a short period of time. The landlord submits this is evidence that her boyfriend has a key and he is able to come and go even when the tenant is not with him.
- He testified that on many occasions the tenant's boyfriend has been observed coming and going to the property. The landlord noted this as an everyday occurrence from July 21, 2017 to July 27, 2017.
- In July the landlord and the tenant had a discussion about the tenant paying additional rent so that the tenant's boyfriend could live in the rental unit. He points to an e-mail where the tenant has agreed to pay an additional \$20 a month.
- The relationship between the landlord and the tenant has deteriorated since the end of July 2017.

The tenant testified as follows:

- Her boyfriend does not live with her. He lives with his parents at another address.
- Her boyfriend often visits her but the landlord has no right to control the coming and going of her guests.

The tenant's boyfriend testified at the hearing that he does not reside in the rental unit and he resides at home with his parents.

Grounds for Termination:

The Notice to End Tenancy identifies the following grounds:

- Tenant has allowed an unreasonable number of occupants in the unit/site

Analysis:

After carefully considering all of the evidence I determined the landlord has failed to establish sufficient grounds to end the tenancy based on the one month Notice to End Tenancy dated July 31, 2017 for the following reasons:

- The landlord has the burden of proof to establish sufficient cause to end the tenancy on a balance of probabilities.
- An arbitrator is asked to determine whether there is sufficient grounds to end the tenancy based on the Notice to End Tenancy that was served on the tenant. Thus a arbitrator is limited to looking at the evidence up to the date of the Notice to End Tenancy. Subsequent conduct may give rise another notice but is not relevant to the Notice that is being considered.
- The landlord failed to prove the tenant's boyfriend is occupying the rental unit. Based on the evidence presented I determined the boyfriend lives at his parents home although he spends a significant period of time at the tenant's rental unit.
- Further, even if the tenant's boyfriend was occupying the rental unit the landlord failed to prove that the presence of the tenant's boyfriend amounts to an unreasonable number of people. The landlord failed to provide a copy of the tenancy agreement which might have a clause that limits the number of occupants. The landlord presented insufficient evidence to establish that two occupants is unreasonable because of the limitation in size. Finally, the landlord was prepared to agree to the boyfriend living there provided the tenant pay additional rent. This is inconsistent with the position that there is an unreasonable number of occupants in the unit if the tenant's boyfriend was living there.
- There is a dispute as to what the rights of the parties are with respect to guest. The parties are referred to section 9 of the Appendix to the Residential Tenancy Act Rules which are deemed to be apart of every agreement which provides as follows:

“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*."

As a result I ordered that the one month Notice to End Tenancy dated July 31, 2017 be cancelled. The tenancy shall continue with the rights and obligations of the parties remaining unchanged.

I dismissed the tenant's application for a monetary order. The tenant failed to present sufficient evidence that would quantify her loss.

I dismissed the tenant's application for the return of the security deposit. The tenancy is ongoing and there is no basis for that order.

I dismissed the tenant's claim to recover an illegal rent increase as the tenant failed to provide proof that she paid rent in excess of \$680 a month. .

I determined that the tenant's boyfriend is not residing in the rental unit and is not an occupant. The landlord may or may not have a right to charge an additional sum If the boyfriend was residing in the rental unit. However, It is not possible to make this determination based on the evidence presented. Section 40 of the Act provides as follows:

Meaning of "rent increase"

40 In this Part, "**rent increase**" does not include an increase in rent that is

(a) for one or more additional occupants, and

(b) is authorized under the tenancy agreement by a term referred to in section 13 (2) (f) (iv) *[requirements for tenancy agreements: additional occupants]*.

As the parties have not provided a copy of the tenancy agreement it is not possible to determine whether there is a provision in the tenancy agreement allowing for an increase in rent for an additional occupant. This issue is moot as I determined the tenant's boyfriend is not an additional occupant at the present time.

The tenant has been successful with part of her application. As a result I ordered the landlord to pay to the tenant the sum of \$50 (half of the cost of the filing fee) such sum may be deducted from future rent.

Conclusion:

I ordered that the one month Notice to End Tenancy dated July 31, 2017 be cancelled. I dismissed the tenant's application for a monetary order, for the return of the security deposit and for the recovery of an illegal rent increase. I ordered that the landlord pay the sum of \$50 to the tenant for half of the cost of the filing fee.

This decision is final and binding on the parties.

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: September 21, 2017

Residential Tenancy Branch