



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, FF

Introduction

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

- cancellation of the landlord's One Month Notice to End Tenancy for Cause (the One Month Notice) pursuant to section 47; and
- authorization to recover the filing fee for this application from the landlord pursuant to section 72.

The landlord's representatives and the tenant attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another. D.A. (the landlord) stated that she would be the primary speaker for the landlord. The tenant stated that A.S., the tenant's son, would be calling into the hearing as a witness. I instructed the tenant that A.S. (the witness) should remain outside of the teleconference hearing until called upon by the tenant to provide their testimony.

The landlord acknowledged receipt of the Tenant's Application for Dispute Resolution (the Application) and evidence on September 01, 2017. In accordance with sections 88 and 89 of the *Act*, I find the landlord was duly served with the Application and evidence.

The tenant acknowledged receipt of the landlord's evidence, which was sent to the tenant by way of registered mail on September 28, 2017. In accordance with section 88 of the *Act*, I find the tenant was duly served with the landlord's evidence.

The Tenant confirmed that they received the One Month Notice on August 15, 2017. In accordance with section 88 of the *Act*, I find the tenant was duly served with the One Month Notice.

Issue(s) to be Decided

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

Is the tenant entitled to recover the filing fee for this application from the landlord?

Background and Evidence

While I have turned my mind to all the documentary evidence, including witness statements and the testimony of the parties, not all details of the respective submissions and/or arguments are reproduced here.

The landlord testified that this tenancy began on September 01, 2013, with a current monthly Tenant Rent Contribution of \$479.00, due on the first day of the month. The landlord testified that they currently retain a security deposit of \$500.00 in trust.

A copy of the landlord's August 15, 2017, One Month Notice was entered into evidence. In the One Month Notice, requiring the tenant to end this tenancy by September 30, 2017, the landlord cited the following reason for the issuance of the One Month Notice:

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

The landlord also submitted the following evidentiary material:

- Two 'Notice of Intent to Enter' forms issued to the tenant, one for August 17, 2016, and one for February 03, 2017;
- A letter from the landlord to the tenant, dated December 01, 2015, regarding "an additional unregistered occupant(s) residing in the unit who is not listed on the most recent Annual Tenant Profile and Annual Verification of Income." This letter requests the tenant to provide income information from the additional occupant;
- A series of e-mail exchanges from December of 2015, between T.F. (an agent of the landlord) and the tenant. The landlord's agent, T.F., inquires as to whether the tenant's daughter has a permanent address elsewhere and the tenant states that her daughter does have "a place of her own.";

- A letter from the landlord to the tenant, dated February 09, 2016, regarding reports received by the landlord that the tenant's daughter is residing in the unit. In this February 09, 2016, letter, the landlord requested proof of the tenant's daughter's residency in the form of paystubs, phone/utility bills or bank statements showing the tenant's daughter's full name and address;
- A letter from the landlord to the tenant, dated April 24, 2017, regarding an alleged material breach of the terms and conditions of the tenant's residential tenancy agreement. The April 24, 2017, letter states that the tenant has an unauthorized occupant residing in the premises and gives the tenant instructions to correct the situation within 14 days by either removing the unauthorized occupant or providing the occupant's personal information and income verification.

In addition to providing some of the same evidentiary material as the landlord, the tenant also submitted the following:

- A copy of a British Columbia Driver's Licence for the tenant's daughter, issued on May 11, 2015, showing an address that is not the dispute address;
- A letter, dated September 13, 2017, from a children and family services society stating the names of the residents who are currently living in the dispute address. The letter also states that the tenant "has company who stays with her temporarily to help her with the grandchildren and/or to visit. None of these people reside in the home with xxxx (the tenant)."
- A copy of a police card with a file number on it and a letter from the tenant explaining the circumstances surrounding it.

T.B., the Tenant Relations Coordinator (the Coordinator) testified that the rent for October 2017 was paid by the tenant and that a receipt was issued. The landlord testified that the tenant was verbally informed that the landlord did not intend for this payment to reinstate the tenancy.

The Coordinator testified that the tenant was sent letters regarding an unauthorized occupant in the rental unit and that this has been an ongoing matter since 2015. The Coordinator testified that the most recent letter sent to the tenant was on April 24, 2017.

The tenant's witness, her son, provided affirmed testimony that he occasionally visits the rental unit with his son and stays for a few days at a time.

In response to the witness's testimony, the landlord testified that the tenancy agreement for the rental unit, signed by the tenant, only allows up to 14 days in a calendar year per guest. The landlord testified that the rental unit is subsidized and does not allow for unauthorized occupants. The landlord testified that there is an older gentleman, who the landlord believes was also living in the rental unit for 8 to 10 months.

The Coordinator testified that the April 24, 2017, letter had a breakdown of the residential tenancy agreement terms that the tenant was in violation of and that there was no response from the tenant in regards to that letter.

The tenant testified that her family is going through a crisis and that her granddaughter is in a vulnerable state. The tenant testified that the family has been in contact with social workers. The tenant testified that the gentleman who comes and goes does not live in the rental unit and was a caregiver for the youngest grandchild. The tenant testified that her daughter comes and goes from the rental unit but does not live there. The tenant testified that they have provided a driver's licence with her daughter's address on it to K.M. that shows the address where her daughter lives.

The Coordinator testified that the required documents to prove the daughter's residency were listed on the April 24, 2017, letter which the tenant has not responded to. The landlord testified that they cannot let one tenant break the same rules that all other tenants are required to abide by. The Coordinator testified they do not have the copy of the driver's licence in their evidence and that a driver's licence is not sufficient to prove residence.

The tenant testified that none of the people who the landlords say live at the rental unit actually live there. The tenant testified that there are four rooms in the rental unit and that she resides there with her five grandchildren. The tenant testified that an inspection was performed by T.F. and K.M. on August 17, 2016, to confirm the occupants for the rental unit.

The landlord testified that they have no reports from that inspection to confirm additional occupants.

Analysis

Section 47 of the *Act* allows a landlord to end a tenancy if there are an unreasonable number of occupants in the rental unit. As this was the sole reason cited in the

landlord's One Month Notice, the landlord bears the burden of demonstrating on a balance of probabilities that there are an unreasonable number of occupants in this four bedroom unit.

I have reviewed all documentary evidence and affirmed testimony and I find that the landlord has failed to provide sufficient evidence to address whether there are an unreasonable number of occupants in the unit. Rather, it appears to me that the landlord has attempted to demonstrate that the tenant has failed to comply with a specific term of the tenancy agreement that any additional occupants must be approved by the landlord and provide their personal information and income verification.

I find that the April 24, 2017, letter from the landlord to the tenant indicates that one of the ways to correct the situation is to "remove all unauthorized occupants **or** provide the additional occupant's personal information and income verification." I find that if the landlord had taken the position that the tenant's daughter was living in the rental unit, leading to an unreasonable number of occupants living there, they would not give an option to the tenant for the tenant's daughter to live in the rental unit upon providing personal information and income verification. I find that this potential for the daughter to live in the rental unit upon providing the information that the landlord has requested demonstrates that the landlord would not find it unreasonable for the tenant's daughter to live in the rental unit.

I further find that the landlord has not clearly proven the tenant's daughter is actually an occupant and not a guest. I find that the landlord has not submitted the tenancy agreement to support the terms of the tenancy agreement that the landlord is trying to enforce. I find that the landlord has not provided any evidence regarding the number of days that the daughter has been in the rental unit within a calendar year. I find that there are no witness statements or affirmed testimony from the landlord, based on the landlord's inspections in August 2016 and February 2017, of evidence found that would lead the landlord to believe that there are an unreasonable number of occupants in the rental unit. On this basis, I find that the landlord has supplied insufficient evidence that the tenant has failed to comply with the maximum of 14 days per guest allowed by the tenancy agreement signed by the tenant.

Based on the evidence and testimony from all parties, I find the landlord has insufficient grounds to issue the One Month Notice and to end this tenancy for cause.

For this reason the One Month Notice is set aside and this tenancy continues until it is ended in accordance with the *Act*.

As the tenant has been successful in this application, I allow them to recover their filing fee from the landlord.

Conclusion

The tenant is successful in their Application.

The One Month Notice is set aside and this tenancy will continue until it is ended in accordance with the *Act*.

Pursuant to section 72 of the *Act*, I order that the tenant may reduce the amount of rent paid to the landlord for the month of November 2017, in the amount of \$100.00, to recover the filing fee for this application.

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: October 16, 2017

Residential Tenancy Branch