



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: CNC OPC

Introduction:

Both parties attended the hearing and gave sworn testimony. The tenant was also represented by a lawyer. I find that the One Month Notice to End a Residential Tenancy dated September 19, 2017 to be effective October 31, 2017 was served by registered mail on the Tenant. The landlord admitted service of the application for dispute resolution by registered mail. The tenant applies to cancel a Notice to End the Tenancy for cause pursuant to section 47 of the *Residential Tenancy Act* (the Act) and to recover filing fees for this application.

Issues: Is the tenant entitled to any relief?

Background and Evidence:

Both parties attended the hearing and were given opportunity to be heard, to provide evidence and to make submissions. The undisputed evidence is the tenancy began on December 1, 2013. The current rent is \$1421 and a security deposit of \$650 and a pet damage deposit of \$650 were paid. The landlord served the Notice to End Tenancy pursuant to section 47 for the following reasons:

- a) The tenant has breached a material term of the tenancy agreement which was not corrected within a reasonable time after written notice to do so.

The landlord served several notices to the tenant that she had an unauthorized occupant residing in the unit in contravention of clause 13 of her tenancy agreement. A previous hearing on whether or not the landlord was permitted to charge \$250 for the additional occupant was held recently and the arbitrator found it was an unauthorized rent increase and was not permitted. The tenant gave evidence that there was not an additional occupant in the unit as one of her sons had moved out.

Counsel for the tenant submitted that the occupant friend was actually approved by the landlord provided there was an additional \$250 per month paid. The landlord said it was not just the money, the occupant was living in the unit, no consent had been given by them, he did not complete the application to rent properly and refused a new lease.

After discussing the facts, the parties agreed to settle on the following terms and conditions:

Settlement Agreement:

1. The friend occupant will be added to the existing lease.
2. The name of the tenant's son who moved out will be crossed off and the friend occupant's name will be inserted.
3. All changes will be initialled by the parties and the friend occupant will co- sign the lease.
4. These changes will all be made and signed by December 15, 2017 or the landlord will have the right to bring an Application to end the tenancy.

Filing fee:

The tenant claims the filing fee. The landlord contends she should not have to pay it for the friend occupant was living in the unit without consent, the tenant should have obtained approval for him and cooperated with the landlord to have the application and lease completed as necessary. The landlord said she was compelled to bring the Notice to End Tenancy because of the actions of the tenant in contravention of clause 13 of the lease and in spite of several warning letters to comply.

Analysis:

Pursuant to the above noted settlement agreement, I hereby set aside the Notice to End Tenancy dated September 19, 2017 and order the parties and occupant friend to comply with its terms in order to preserve the tenancy.

Regarding the filing fee, I find clause 13 of the tenancy agreement clearly sets out that the tenant was required to get prior written approval for the occupant friend to occupy the suite. She did not and the landlord discovered he was residing there in September. This caused the landlord to issue warning notices and eventually a One Month Notice to End Tenancy. I find that if the tenant had complied with clause 13 in the terms of her tenancy agreement, the landlord most likely would not have had to issue a One Month Notice to End Tenancy. I find the tenant not entitled to recover her filing fee to dispute the Notice which was issued due to her non compliance with her tenancy agreement.

Conclusion:

I set aside the Notice to End Tenancy dated September 19, 2017 and find the tenant not entitled to recover the filing fee for the reasons set out above.

To give effect to the Settlement Agreement, **I HEREBY ORDER THAT**

- 1. The friend occupant will be added to the existing lease.**
- 2. The name of the tenant's son who moved out will be crossed off and the friend occupant's name will be inserted.**
- 3. All changes will be initialled by the parties and the friend occupant will co-sign the lease.**
- 4. These changes will all be made and signed by December 15, 2017 or the landlord will have the right to bring an Application to end the tenancy.**

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: December 12, 2017

Residential Tenancy Branch