



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 an Application for Dispute Resolution by the tenants filed under the Residential Tenancy Act (the “Act”), to cancel One Month Notice to End Tenancy for Cause, (the “Notice”) issued on May 27, 2018.

Both parties appeared, gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions at the hearing.

In a case where a tenant has applied to cancel a Notice, Rule 7.18 of the Residential Tenancy Branch Rules of Procedure require the landlord to provide their evidence submission first, as the landlord has the burden of proving cause sufficient to terminate the tenancy for the reasons given on the Notice.

I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure. I refer only to the relevant facts and issues in this decision.

Issues to be Decided

Should the Notice be cancelled?

Background and Evidence

The tenancy began on November 1, 2017. Rent in the amount of \$2,500.00 was payable on the first of each month. The tenants paid a security deposit of \$1,250.00.

The parties agreed that the Notice was served on the tenants indicating that the tenants are required to vacate the rental unit on July 1, 2018.

The reason stated in the Notice was that the tenants have:

- Assigned or sublet the rental unit without the landlord's consent.

The landlord testified that the tenants have rented out the basement of the rental premises. The landlord stated that when they entered into the rental agreement it was to be the two (2) tenants, their sister, and two (2) children living there.

The landlord testified that the sister and one (1) child vacated the premises and the tenants without their knowledge now have a new occupant and two (2) additional children living there. The landlord stated that they did not give the tenants consent to have these occupants reside in the property.

The tenants testified that they have not sublet the property as they are still residing in the premises. The tenants stated that they did not realize it was a problem to have different occupants move in without the consent of the landlord. The tenants stated that when their sister moved out they found it difficult to pay the rent and they had a friend and their two children move in.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

How to end a tenancy is defined in Part 4 of the Act. Section 47(1) of the Act a landlord may end a tenancy by giving notice to end the tenancy.

I have considered all of the written and oral submissions submitted at this hearing, I find that the landlords has not provided sufficient evidence to show that the tenants have

- Assigned or sublet the rental unit without the landlord's consent

In this case the tenants have not sublet the premises as they are still residing in the premises. I find the evidence does not support the Notice was issued for the reasons stated. Therefore, I cancel the Notice and the Notice has no force or effect.

However, the tenant's sister and their child were occupants with the consent of the landlord and they have vacated the rental unit. The tenants without the consent of the landlord, verbal or in writing found new occupants and have also increase the number of occupants. I find the tenants breached the Act, when they failed to get permission of the landlord.

Under section 14 of the Act, a tenancy agreement may be amended to add, remove, or change a term, only if both the landlord and tenant agree to the amendment.

Therefore, I find the tenants must comply with the original terms agreed upon. Since the tenants do not have the consent to increase the number of occupants and have not had the new occupants approved. I Order the tenants to have the unauthorized occupants vacate no later than August 31, 2018, pursuant to section 62 of the Act. Should the tenants fail to comply with my order the landlord is at liberty to issue a new notice for failure to comply with my order.

Conclusion

The tenants' application to cancel the Notice, is granted

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: July 23, 2018

Residential Tenancy Branch