



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding MAY WAH HOUSING CORPORATION
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC, RR

Introduction

This hearing convened as a result of a Tenant's Application for Dispute Resolution, filed on November 11, 2018, where the Tenant requested an Order canceling a 1 Month Notice to End Tenancy for Cause issued on October 30, 2018 9 (the "Notice") and an Order pursuant to section 65(1) of the *Residential Tenancy Act* that the Tenant be permitted to reduce her rent for the cost of repairs, services or facilities.

The hearing was conducted by teleconference at 11:00 a.m. on December 7, 2018.

Both parties called into the hearing and were provided the opportunity to present their evidence orally and in written and documentary form and to make submissions to me.

The parties agreed that all evidence that each party provided had been exchanged. No issues with respect to service or delivery of documents or evidence were raised.

I have reviewed all oral and written evidence before me that met the requirements of the *Residential Tenancy Branch Rules of Procedure*. However, not all details of the respective submissions and or arguments are reproduced here; further, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Preliminary Matter—Tenant's Ability to Participate in Hearing

Initially the Tenant claimed she did not have sufficient command of the English language to participate in the hearing. She also stated that she did not have anyone who could interpret for her.

The Landlord's representative, H.F., stated that the Tenant communicates in English with other residents of the rental building in which the rental unit is located, and communicates in English in written form as confirmed by the documents provided in evidence.

I found that Tenant had sufficient command of English to deal with her request to cancel the Notice. Conversely, based on her responses to my questions, I found that she was not able to proceed with her request to reduce rent for the cost of repairs, services or facilities pursuant to section 65(1) of the *Act*.

Preliminary Matter—Issues to be Decided

Although I found the Tenant could participate in the hearing with respect to her request to cancel the Notice, I find that she does not have sufficient command of English to deal with her monetary claim.

Further, *Residential Tenancy Branch Rule of Procedure 2.3* provides that claims made in an Application for Dispute Resolution must be related to each other. Arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply.

Hearings before the Residential Tenancy Branch are scheduled on a priority basis. Time sensitive matters such as a tenant's request for emergency repairs or the validity of a notice to end tenancy are given priority over monetary claims.

It is my determination that the priority claim before me is the validity of the Notice. I also find that this claim is not sufficiently related to the Tenant's monetary claim; accordingly I exercise my discretion and **dismiss the balance of the Tenant's claims with leave to reapply**. Should the Tenant proceed with her monetary claim, she is directed to bring an interpreter.

Issue to be Decided

1. Should the Notice be cancelled?

Background and Evidence

Residential Tenancy Branch Rules of Procedure—Rule 6.6 provides that when a tenant applies to cancel a notice to end tenancy the landlord must present their evidence first as it is the landlord who bears the burden of proving (on a balance of probabilities) the

reasons for ending the tenancy. Consequently, even though the Tenant applied for dispute resolution and is the Applicant, the Landlord presented their evidence first. The Landlord presented their evidence first.

The Landlord's Operations Manager, H.F., testified as follows.

He confirmed that this tenancy April 2014, although this Landlord took over management of the building in March of 2017.

H.F. stated that the rental unit is in a single room occupancy building and as such the Landlord believes the Tenant is not permitted to have overnight guests. He also stated that the residential tenancy agreement specifically prohibited overnight guests. Introduced in evidence was a copy of the tenancy agreement; paragraph 11 of the tenancy agreement deals with guests and provides as follows:

11. OCCUPANTS AND GUESTS

- 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.
- 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 through dispute resolution under the *Residential Tenancy Act*.

In an addendum to the agreement the following is included with respect to guests and reads as follows:

Tenants are responsible to ensure that their guests and all other invitees strictly comply with all terms and conditions of the Tenancy Agreement, as supplemented by this Addendum, and as may be amended by the Landlord during the term of the tenancy, governing conduct in the Building.

The Tenant and Tenant's occupants and guests shall not do nor permit to be done at the rental unit or residential property any act, activity, matter or thing which is objectionable to the Landlord or that may cause an annoyance, nuisance, grievance or disturbance to the Landlord or other tenants and occupants of the building. In addition, noise or behaviour, which in the reasonable opinion of the Landlord may disturb the comfort of any occupant of the residential property, must not be made by the Tenant or the Tenant's guests, nor must any disturbance be repeated or persisted after a request to discontinue such noise or behaviour has been made by the Landlord or its acting agents. The quiet enjoyment of another occupant of the residential property must be respected, in particular between the hours of 10:00pm and 7:00am. If any Tenant or guest causes another tenant to vacate his/her rental unit because of such noise or other disturbance, harassment, or annoyance or because of illegal activity by the Tenant or Tenant's guest, the Tenant agrees to indemnify and save harmless the Landlord for all costs, losses, damages, or expenses caused thereby.

Failure by the Tenant to ensure their guests' compliance will be treated as a breach of the applicable rule or regulation by the Tenant himself/herself. The Landlord may end the tenancy pursuant to the Residential Tenancy Act as one of the remedies.

H.F. stated that they believe that the Tenant has a frequent visitor who is not a tenant of the building. H.F. stated that they believe the Tenant also gave a key to the visitor as he has been observed using the key to open the front door and the Tenant's room.

In response to the Landlord's claims, the Tenant testified that she lives alone and that her friend is a visitor, not an occupant. She stated that he used live in the building but moved away to another rental building. She stated that he comes and visits but he lives in another building nearby the rental unit. She further confirmed that she knew she couldn't have a roommate live with her and she does not have such a roommate.

Analysis

After consideration of the testimony and evidence before me, and on a balance of probabilities, I find as follows.

The reasons cited on the Notice were that the Tenant has allowed an unreasonable number of *occupants* in a rental unit. This Notice was issued pursuant to section 47(1)(b) which reads as follows:

47 (1) A landlord may end a tenancy by giving notice to end the tenancy if one or more of the following applies:

...
(c) there are an unreasonable number of ***occupants*** in a rental unit;

[emphasis added in bold italics]

The use of the word *occupant* in section 47 and the Notice means a person who occupies the rental unit as their residence.

The evidence before me confirms that the Tenant does not have a roommate, or additional occupant living with her; rather she has a friend who visits and on occasion spends the night. I accept the Tenant's testimony that her friend lives in another building and is not living with her.

The Landlord alleged the Tenant was prohibited from having overnight guests and that in doing so, she violated the terms of her tenancy agreement. Based on the evidence before me, I am unable to find such a restriction in the tenancy agreement.

In any event, I note that section 9 of the Schedule to the *Residential Tenancy Regulation* prohibits a Landlord from including such restrictions in a tenancy agreement.

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*.

In all the circumstances, I find the Landlord has failed to prove the reasons cited on the Notice and I therefore grant the Tenant's request to cancel the Notice. The tenancy shall continue until ended in accordance with the *Residential Tenancy Act*.

Conclusion

The Notice is cancelled.

The Tenant's request for a rent reduction pursuant to section 65(1) of the *Residential Tenancy Act* is dismissed with leave to reapply.

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 07, 2018

Residential Tenancy Branch