



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC FF

Introduction

This hearing was convened as a result of the Tenants' Application for Dispute Resolution, made on November 30, 2018 (the "Application"). The Tenants applied for the following relief pursuant to the *Residential Tenancy Act* (the "Act"):

- an order cancelling a One Month Notice to End Tenancy for Cause, dated November 23, 2018 (the "One Month Notice"); and
- an order granting recovery of the filing fee.

The Tenants and the Landlord attended the hearing at the appointed date and time, and provided affirmed testimony.

The Tenants testified the Application package was served on the Landlord by registered mail. The Landlord acknowledged receipt. In addition, the Landlord testified the documentary evidence upon which he intended to rely was served on the Tenants by leaving a copy attached to the door of the rental unit. The Tenants acknowledged receipt. No issues were raised during the hearing with respect to service or receipt of the above documents. Pursuant to section 71 of the *Act*, I find the above documents are sufficiently served for the purposes of the *Act*.

The parties were given a full opportunity to present evidence orally and in written and documentary form, and to make submissions to me. I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure, and to which I was referred. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issues to be Decided

1. Are the Tenants entitled to an order cancelling the One Month Notice?
2. Are the Tenants entitled to an order granting recovery of the filing fee?

Background and Evidence

The parties agreed the tenancy began on August 1, 2017. Rent in the amount of \$1,900.00 per month is due on the 1st day of each month. Utilities are not included in rent. The Tenants paid a security deposit of \$950.00, which the Landlord holds.

The parties testified that the rental property is a half-duplex. The upstairs and downstairs areas are separate units, divided by a door. The Tenants live in the downstairs portion of the rental property and rent the upstairs portion to 5 international students for \$250.00 per student per month.

The Landlord wishes to end the tenancy. Accordingly, he issued the One Month Notice on the basis that the Tenants or a person permitted on the property by the Tenants have put the Landlord's property at significant risk. Specifically, the Landlord testified there are too many occupants in the rental property which impacts his ability to insure the property. In support, the Landlord submitted a copy of email correspondence from the insurer, dated November 9, 2018, in support, which states:

This is to confirm that we do not offer coverage for housing multiple students, and if you did are [sic] ability to insure this location would be impacted.

[Reproduced as written.]

In reply, the Tenants acknowledged there are currently 8 occupants in the rental property. This number includes the Tenants and one child, and 5 international students. However, they testified there was no discussion at the beginning of the tenancy with regard to limits on the number of occupants permitted in the rental unit, or of insurance implications.

In addition, the Tenants testified that they contacted the Landlord's insurer and were advised that the Landlord could obtain additional coverage for the students if desired. The Tenants testified they would be unable to afford to pay rent without the income from the international students. The Tenants' testimony was not disputed by the Landlord.

Analysis

Based on the documentary evidence and oral testimony provided during the hearing, and on a balance of probabilities, I find:

Section 47 of the *Act* permits a landlord to take steps to end a tenancy for the reasons enumerated therein. In this case, the One Month Notice was issued on the basis that the Tenants or a person permitted on the property by the Tenants have put the Landlord's property at significant risk.

I have considered the evidence and submissions of the parties, and find there is insufficient evidence of significant risk to the Landlord's property. Indeed, the Landlord relied exclusively on email correspondence from his insurer suggesting his coverage would be impacted and indicating only one international student was permitted. However, the Tenants' testimony, which I accept and was not disputed by the Landlord, confirmed the Tenants were entitled to rent out a portion of the rental property. Further, I accept the Tenants' testimony that there was no discussion at the beginning of the tenancy about the number of students permitted, and that the Landlord's insurer advised that additional coverage could be obtained. Accordingly, I find there is insufficient evidence of significant risk to the Landlord's property and order that the One Month Notice is cancelled. The tenancy will continue until otherwise ended in accordance with the *Act*.

Having been successful, I find the Tenants are entitled to recover the \$100.00 filing fee paid to make the Application, which I order may be deducted from a future rent payment at the Tenants' discretion.

Conclusion

I order that the One Month Notice is cancelled. The tenancy will continue until otherwise ended in accordance with the *Act*.

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: January 15, 2019

Residential Tenancy Branch