



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding PACIFICA HOUSING
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNL

Introduction

On January 3, 2019, the Tenant submitted an Application for Dispute Resolution under the *Residential Tenancy Act* ("the Act") seeking to cancel a 2 Month Notice to End Tenancy for Landlord Use of Property dated December 20, 2018.

The matter was set for a conference call hearing. Both parties appeared at the hearing. The Tenant was assisted by an advocate. The hearing process was explained and the participants were asked if they had any questions. Both parties provided affirmed testimony and were provided the opportunity to present their evidence, orally and in written and documentary form, and make submissions to me.

I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issues to be Decided

- Does the Landlord have sufficient reason to end the tenancy?
- Is the Landlord entitled to an order of possession for the rental unit?

Background and Evidence

The Landlord and Tenant both testified that the tenancy began on June 1, 2017, on a month to month basis. The rental property contains nonprofit housing for those with low or modest incomes. Rent is subsidized and is geared to income based on periodic proof of income and declaration by Tenants of the number of occupants residing in the unit.

The Landlord submitted that the Tenant has failed to abide by her tenancy agreement regarding the number of occupants living in the unit. The Landlord submits that in the event of a change of the number of occupants and / or income the Landlord has the right to terminate the tenancy agreement.

The Landlord submitted the following information:

- The Landlord received a report that an unapproved occupant was living in the rental unit. In July 2018, the Tenant was sent a letter and was asked to provide proof to the Landlord that the occupant, her boyfriend, was residing elsewhere. The Landlord asked the Tenant to complete an application to begin the process of adding her boyfriend to the file, or if he is not living there, to have him supply 2 pieces of proof of residency such as a lease agreement; utility bill; government identification, or tax assessment showing his address.
- The Tenant did not respond to the July 2018, letter.
- In September 2018, the Landlord was informed that additional occupants had moved into the rental unit.
- In November 2018, the Tenant informed the Landlord that she was moving her brother's children into the unit. The Landlord advised the Tenant of the application process to maintain her subsidy.
- On November 16, 2018, the Landlord received a transfer request from the Tenant who was seeking a unit with additional bedrooms.
- On November 29, 2018, the Landlord sent a letter to the Tenant advising the Tenant she was in breach of her tenancy agreement and reminding her of her obligations to maintain her rent subsidy. The Tenant was advised that termination of tenancy is a consequence. The Landlord gave the Tenant until December 13, 2018, to respond.
- On December 13, 2018, the deadline to respond to the Landlord passed with no response from the Tenant.
- On December 20, 2018, the Landlord sent a third letter to the Tenant regarding the unauthorized occupants and lack of response from the Tenant. The Landlord issued the notice to end tenancy.

The Landlord provided a copy of the Residential Tenancy Agreement addendum that provides a condition that the Tenant agrees from time to time, on a form provided by the Landlord, to declare the number of Tenants, occupants, and dependents in the rental unit. Failures by the Tenant to make a declaration as required by the Landlord and or

provide information or documentation requested by the Landlord will be cause for termination of the agreement.

The Landlord issued the Tenant a 2 Month Notice to End Tenancy For Landlord's Use Of Property dated December 20, 2018 ("the 2 Month Notice"). The reason for ending the tenancy on the Notice is:

The tenant no longer qualifies for the subsidized unit.

The Landlord testified that the reason for ending the tenancy is related to the number of occupants living in the unit and not a failure of the Tenant to provide income verification to the Landlord.

The 2 Month Notice provides information for Tenants who receive the Notice. The Notice states that a Tenant has the right to dispute the Notice within 15 days after it is received by filing an Application for Dispute Resolution at the Residential Tenancy Branch.

The Tenant disputed the 2 Month Notice within the required time period. In response to the Landlord's testimony, the Tenant's advocate testified that the Tenant's boyfriend stays over occasionally and there is no material breach of the tenancy agreement.

The Tenant testified that her boyfriend does not live at the unit and only stays over occasionally. She testified that her brother's two children only stayed at the rental unit for one week.

The Tenant testified that she received the Landlord's letters; however, she was unable to reach the Landlord to have a conversation. She testified that the Landlord told her she was not welcome to attend the office and the Landlord would not answer her telephone calls. She testified that she called the Landlord's office many times for close to a month and was informed by the receptionist that the Landlord would not talk to her. She testified that she would leave messages for the Landlord.

The Tenant testified that her boyfriend lives elsewhere with his friend. The Tenant provided a witness, Mr. T.W. who provided affirmed testimony that the Tenant's boyfriend is living with him full time for the past year. Mr. T.W. testified that the Tenant's boyfriend occasionally stays at the Tenants place. He testified that the Tenant's boyfriend's name is not recorded on his tenancy agreement; however, he helps out with paying the rent.

The Tenant submitted that it was not possible to provide the Landlord with the proof they are seeking because the proof does not exist. She testified that her boyfriend is

not named in a tenancy agreement and does not have any bills in his name. The Tenant testified that because of this, she did not know what the Landlord required and the Landlord would not communicate with her.

The Tenant testified that her boyfriend would babysit for her a few days each week when she was working late into the evenings. The Tenant testified that her boyfriend has not moved into the rental unit.

In reply, the Landlord testified that in mid-November 2018, the Tenant attended the Landlord's office and was belligerent. The Landlord testified that they had to clear the office. The Landlord testified that the Tenant was informed that future communication would be by telephone. The Landlord testified that he never received any phone calls from the Tenant.

The Landlord testified that they performed a walk through inspection of the rental unit on December 5, 2018, and discovered a number of men's shoes in a closet.

The Landlord produced a witness, Mr. J.U. who provided affirmed testimony that he believes the Tenant's boyfriend has been living there for one year. He testified that he sees him there every day. He testified that the Tenant's boyfriend is constantly smoking and having guests over. The witness testified that the Tenant's boyfriend's behavior is affecting his tenancy.

Analysis

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

The Tenant disputed the 2 Month Notice on January 3, 2019, which is within the required timeframe to dispute the Notice.

I find that there is no dispute on whether or not the Tenant is required to provide the Landlord information regarding the number of occupants residing in the rental unit. I find that the tenancy agreement requires the Tenant to periodically provide this information, and income information, as a condition of the tenancy.

I find that any breach of the tenancy agreement with respect to the Tenant moving the two children into the unit was immediately corrected by the Tenant after the Landlord denied permission. I find that this brief incident is not a sufficient reason to end the tenancy.

I have considered the evidence from the Landlord regarding complaints from neighbors of the Tenant. The complaints regarding the number of guests, activity, and disrespectful behaviour are not directly relevant to the reason for ending the tenancy provided within the 2 Month Notice. A Tenant is responsible for the actions of any guest permitted on the property. If the Landlord has concerns about the actions of the Tenant with respect to disturbing other occupants of the rental property, the Landlord has the right to issue a One Month Notice to End Tenancy for Cause. I find that the allegations of the number of guests, activity, and disrespectful behaviour are not relevant to the reason for ending the tenancy provided within the 2 Month Notice that is before me.

The Landlord believes the Tenant's boyfriend is living in the rental unit and is relying on a witness report that he is always there; evidence of men's shoes in the rental unit; and a failure of the Tenant to provide required information.

The Tenant provided affirmed testimony that her boyfriend is often at the unit but is not living there and she supported her testimony with witness testimony that he resides elsewhere. The Tenant submits that it was not possible to meet the Landlord's demand of proof and that the Landlord would not communicate about this issue by accepting or responding to her calls.

With respect to the Landlord's evidence that the boyfriend is always at the unit, I find that it is not unusual for a couple in a relationship to spend significant time together. The Tenant has a right to have guests and has the right to have her boyfriend babysit and/ or stay the night.

I have considered the Landlord's testimony that they found men's shoes in the unit. I find it is reasonable to accept that the Landlord inspected the Tenant's unit looking for evidence that the Tenant's boyfriend is living there. I find that observing shoes in the rental unit is suggestive but not conclusive proof that the Tenant's boyfriend lives at the unit. There was no additional testimony presented by the Landlord with respect to what was observed at the inspection.

The Tenant has the right of reasonable privacy and a Landlord must not unreasonably restrict access of a guest to a residential property. However, The Landlord has the right to determine the eligibility of Tenants who live at the non-profit housing complex and to determine qualification for a rent subsidy.

With respect to the Residential Tenancy Agreement addendum that requires the Tenant to declare the number of Tenants, occupants, and dependents in the rental unit, there was no evidence presented that the Tenant failed to complete a required declaration form.

With respect to whether or not there was a failure to provide information or documentation requested by the Landlord, I find that the Landlord restricted communication to phone calls; and I find that it is more likely than not that this contributed to the Tenant's ability to communicate and discuss the reasonableness of the Landlord's request for proof of residency. It appears to me that the Tenant was trying to communicate to find out what other information would satisfy the Landlord, and she was unable to clarify the issue. The Landlord's letter dated July 18, 2018, suggests that the Landlord would accept proof other than what was itemized in the letter. Based on the evidence before me, I find that the Tenant was not simply refusing to provide information.

In order for the Landlord to determine that the Tenant no longer qualifies for the rental unit, the Landlord has the burden to prove that the Tenant has an unauthorized occupant living in the unit. The Tenant provided evidence that her boyfriend does not live at the dispute address. I find that there is insufficient evidence from the Landlord to prove that the Tenant's boyfriend is living in the rental unit.

The Tenant's application to cancel the 2 Month Notice To End Tenancy For Landlord's Use of Property dated December 20, 2018 is successful. The 2 Month Notice is cancelled.

The tenancy will continue until ended in accordance with the Act.

The Landlord may remain unsatisfied regarding the issue of occupancy. The Tenant is reminded that her tenancy agreement requires her provide information or documentation relating to occupants and income as requested by the Landlord. The parties are encouraged to work together to determine what documents or declaration can be provided by the Tenant to satisfy the Landlord.

Conclusion

The Tenant's Application to cancel the 2 Month Notice to End Tenancy For Landlord's Use Of Property dated December 20, 2018, is successful.

I find that there is insufficient evidence from the Landlord to prove that the Tenant has an unauthorized person living in the rental unit.

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: February 14, 2019

Residential Tenancy Branch