



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, FFT

Introduction

This hearing was scheduled in response to the tenants' application pursuant to the *Residential Tenancy Act* (the "Act") for:

- cancellation of the landlord's 1 Month Notice to End Tenancy for Cause (the "1 Month Notice") pursuant to section 47; and
- authorization to recover the filing fee for this application from the landlord pursuant to section 72.

The tenants and the landlord attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. The tenants were assisted by an advocate.

At the outset of the hearing, each party confirmed that they had received the other party's evidence. As neither party raised any issues regarding service of the application or the evidence, I find that both parties were duly served with these documents in accordance with sections 88 and 89 of the *Act*.

The parties agreed that the landlord's first name was incorrectly provided in the tenants' application. Accordingly, I have amended the tenants' application to reflect the name provided by the landlord during the hearing.

Issue(s) to be Decided

Should the landlord's 1 Month Notice be cancelled? If not, is the landlord entitled to an order of possession?

Are the tenants authorized to recover the filing fee for this application from the landlord?

Background and Evidence

As per the submitted tenancy agreement and testimony of the parties, the tenancy began on May 1, 2018 on a fixed term until March 31, 2019. Rent in the amount of \$1,215.00 is payable on the first of each month. The tenants remitted a security deposit in the amount of \$450.00 at the start of the tenancy, which the landlord still retains in trust. The tenants continue to reside in the rental unit.

The tenants acknowledged receipt of the landlord's 1 Month Notice dated January 24, 2019, on this same date. The grounds to end the tenancy cited in that 1 Month Notice were;

- the tenant or a person permitted on the property by the tenant has put the landlord's property at significant risk
- breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so

Under the details of the cause portion of the 1 Month Notice, the landlord wrote "the tenants have an additional occupant living in the unit contrary to their agreement. Tenants are also smoking in their unit."

During the hearing the landlord testified that he cannot substantiate the tenants smoked in their unit, therefore he no longer seeks to end the tenancy on this first ground. He testified that instead, he seeks only to end the tenancy for breach of a material term of the tenancy agreement. The landlord testified that the tenants' have allowed their son to reside in the unit contrary to a clause in the tenancy agreement. On December 20, 2018 the landlord informed the tenants in writing of the breach, ordering the tenants to "rectify the situation as soon as possible." The landlord testified that despite the warning letter, on January 24, 2019 while passing by the unit, he observed the tenants' son beside a blow up mattress through the window. The landlord submitted witness statements from other residents of the rental property stating that they had seen the tenants' son "come and go" from the tenants' rental unit.

In reply, the tenants testified that because the landlord accepted payment of an additional \$100.00 for December 2018 rent, it was their understanding their son was permitted to reside in the unit that month. As such they understood the December 20, 2018 letter was in reference to any breach following December 31, 2018. The tenants' son provided affirmed testimony that he has not resided in the unit since December 31, 2018; he has only attended the unit as a guest. In support of their verbal testimony, the tenants submitted a detailed listing of the dates their son visited their rental unit, text messages to confirm that the son was travelling back and forth from his residence to

visit the tenants, and a witness statement from their son's girlfriend confirming the dates their son was residing with her.

Analysis

Under section 47 of the *Act*, a landlord may end the tenancy for breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so. In order to end a tenancy for breach of a material term the landlord must prove the breach and prove the tenant was provided with written notice of the breach that includes a timeline for the tenant to correct the breach.

Clause 5 of the tenancy agreement reads;

"subject to clause 11, additional occupants, the tenants agree that for each additional tenant or occupant not named in clause 1 above, the rent will increase by \$100.00 per month, effective from the date of the occupancy. The acceptance by the landlord of any additional occupant does not otherwise change this agreement or create a new tenancy."

[Reproduced as written]

On the basis of the \$100.00 payment, I find the landlord agreed to permit the tenants' son to reside in the unit for the month of December. As such, I find the tenants were not in breach of the tenancy agreement at the time the landlord issued the warning letter December 20, 2018. Accordingly I find the warning letter is of no effect.

Even if I had found the warning letter effective January 1, 2019, the landlord's testimony that he observed the tenants' son and a blow up mattress on one date is not sufficient to establish occupancy in excess of 14 cumulative days. The landlord's other evidence relied on witness statements that stated the tenants' son was seen "coming and go" from the tenants' rental unit, but no detailed information regarding the exact dates was provided. The tenants' son has every right under the tenancy agreement and the *Act* to visit his parents as a guest. The tenants submitted detailed information providing exact dates setting out the tenants' son's visits. The tenants also submitted text messages and a witness statement to corroborate their submitted evidence.

Overall, I find the landlord has failed to meet his burden. Therefore, the tenants' application is successful and the landlord's One Month Notice is cancelled and of no force or effect.

As the tenants were successful in this application, I find that the tenants are entitled to recover the \$100.00 filing fee paid for the application from the landlord.

Conclusion

The tenants' application to cancel the 1 Month Notice is upheld. The tenancy will continue until it is ended in accordance with the *Act*.

The tenants are entitled to deduct \$100.00 from future rent in satisfaction of the monetary award to recover the filing fee.

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: March 14, 2019

Residential Tenancy Branch