



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding AMACON PROPERTY MANAGEMENT SERVICES
INC. and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the *Act*) for cancellation of the One Month Notice to End Tenancy for Cause, pursuant to section 47.

Landlord D.T. and property manager B.C. (the "landlords") attended the hearing. The tenant and her advocate attended the hearing. The tenant and the landlords were each given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses. The landlords called witness J.M. The tenant called witness A.K.

The tenant testified that the landlord was served with her application for dispute resolution via registered mail but she could not recall on what date. The landlords testified that the tenant's application was received on August 9, 2019. I find that the tenant's application was served in accordance with section 89 of the *Act*.

Issue to be Decided

1. Is the tenant entitled to cancellation of the One Month Notice to End Tenancy for Cause, pursuant to section 47 of the *Act*?

Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of both parties, not all details of their respective submissions and arguments are reproduced here. The relevant and important aspects of the tenant's and landlords' claims and my findings are set out below.

Both parties agreed to the following facts. This tenancy began on June 1, 2019 and is currently ongoing. Monthly rent in the amount of \$825.00 is payable on the first day of each month. A security deposit of \$412.50 and a pet damage deposit of \$412.50 were paid by the tenant to the landlords. A written tenancy agreement was signed by both parties and a copy was submitted for this application.

The landlord testified that on July 25, 2019 a One Month Notice to End Tenancy for Cause with an effective date of August 31, 2019 (the "One Month Notice") was posted on the tenant's door. The tenant confirmed receipt of the One Month Notice on July 25, 2019.

The One Month Notice stated the following reasons for ending the tenancy:

- Tenant has allowed an unreasonable number of occupants in the unit/site; and
- Breach of material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.

The tenancy agreement states, at section 2 of the Addendum:

When a guest is not listed on the Tenancy Agreement but resides in the Premises for a period in excess of 14 days within any calendar year, he or she is deemed to be occupying the Premises contrary to this agreement and without the written permission of the landlord, this person shall be considered a trespasser.

The tenancy agreement states at section 11:

- 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.

Landlord D.T. testified that witness A.K. has been residing with the tenant consistently since she moved in. Landlord D.T. testified that he has seen the tenant in the laundry room on numerous occasions and constantly sees him at the subject rental apartment building. Landlord D.T. testified that witness A.K. has a set of keys which evidences his

residence at the subject rental property. Landlord D.T. testified that it is the landlord's policy to have all persons who spend more than 14 nights per year to be added as a tenant on the tenancy agreement and the tenant has refused to add witness A.K. to her tenancy agreement.

The landlords entered into evidence a signed letter from another resident of the subject rental building which states that witness A.K. told her he lived in the subject rental building. Witness J.M. testified that he sees witness A.K. at the subject rental property every few weeks but has not seen him in the laundry room.

Both parties agree that landlord D.T. personally served the tenant with a breach letter on June 13, 2019 which states:

Please be advised that it has been reported that you have an unauthorized occupant staying frequently in your unit, [witness A.K.], which exceeds the allowable permitted time a single guest may stay in the unit. The only name on your Tenancy Agreement is yours. Should a guest of yours remain for longer than 14 days in the calendar year, they can be considered an additional occupant of the unit.

Please be advised that you are in breach of a material term of your tenancy agreement. Any unauthorized occupants will not be permitted to live in the suite without the landlords consent in writing.

Please rectify this issue by **June 9th, 2019**. Failure to cooperate will result in termination of your tenancy as this is not the first request.

The tenant testified that witness A.K. does not live with her and maintains his own address which was provided orally in the hearing. The tenant testified that she has macular degeneration and other eye related problems and that witness A.K. is a good friend of hers who checks up on her most days in the week. The tenant testified that witness A.K. used to occasionally spend the night but that since she received the breach letter he has not spent the night. The tenant testified that witness A.K. does have a key to her apartment as he is a frequent visitor and it convenient for him to have a key. The tenant testified that the tenant frequently does her laundry for her. The tenant testified that she is not in a relationship with witness A.K. and that they are just friends so she sees no reason to add him to her tenancy agreement.

Witness A.K. testified that he does not live with the tenant but is good friends with her and checks up on her most days. Witness A.K. testified that he often does the tenants laundry for her and has spoken with people in the laundry room but has never told anyone that he lives in the subject rental building.

Analysis

I find that the One Month Notice was served on the tenant in accordance with section 88 of the *Act*.

Based on the evidence of both parties, I find that the landlord has not proved, on a balance of probabilities, that witness A.K. resides at the subject rental property. The tenant and witness A.K. confirmed that witness A.K. visits the subject rental property most days. Landlord D.T. testified that she sees witness A.K. most days. I find the witness letter entered into evidence, and landlord D.T.'s observations are not enough to prove that the tenant resides at the subject rental property.

Section 47(1)(c) of the *Act* states that a landlord may end a tenancy by giving notice to end the tenancy if there are an unreasonable number of occupants in a rental unit.

I find that there are not an unreasonable number of occupants in the rental unit as it has not been proved that anyone other than the tenant resides in the subject rental property.

Section 47(1)(h) of the *Act* states that a landlord may end a tenancy by giving notice to end the tenancy if the tenant

- (i) has failed to comply with a material term, and
- (ii) has not corrected the situation within a reasonable time after the landlord gives written notice to do so.

Section 30 of the *Act* states that a landlord must not unreasonably restrict access to residential property by

- (a) the tenant of a rental unit that is part of the residential property, or
- (b) a person permitted on the residential property by that tenant.

Section 5 of the *Act* states:

(1) Landlords and tenants may not avoid or contract out of this Act or the regulations.

(2) Any attempt to avoid or contract out of this Act or the regulations is of no effect.

I find that section 2 of the Addendum to the Tenancy Agreement seeks to contract out of section 30 of the *Act* by attempting to restrict access to the residential property by a person permitted on the residential property by that tenant, contrary to section 5 of the *Act*.

Pursuant to section 5(2) of the *Act*, I find that section 2 of the Addendum to the Tenancy Agreement is unenforceable and is therefore not a material term. Therefore, the breach of section 2 of the Addendum is not a ground for eviction under section 47(h) of the *Act*.

Pursuant to my above findings, I find that the One Month Notice is cancelled and of no force or effect.

Conclusion

The One Month Notice is cancelled and of no force or effect. This tenancy will continue 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: October 01, 2019

Residential Tenancy Branch