



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes Landlords: OPC FF
 Tenants: CNC DRI

Introduction

This hearing dealt with cross Applications for Dispute Resolution filed by the parties under the *Residential Tenancy Act* (the “Act”).

The Landlords’ Application for Dispute Resolution was made on September 3, 2019 (the “Landlords’ Application”). The Landlords applied for the following relief, pursuant to the *Act*:

- an order of possession based on a One Month Notice to End Tenancy for Cause, dated September 10, 2019 (the “One Month Notice”); and
- an order granting recovery of the filing fee.

The Tenants’ Application for Dispute Resolution was also made on September 19, 2019 (the “Tenants’ Application”). The Tenants applied for the following relief, pursuant to the *Act*:

- an order cancelling a cancelling the One Month Notice; and
- an order regarding a disputed rent increase.

The Landlords were represented at the hearing by N.H., their daughter and agent. The Tenants K.I. and A.I. attended the hearing on their own behalves. The Tenant R.C. was represented at the hearing by A.N., an agent. All in attendance provided a solemn affirmation at the beginning of the hearing.

On behalf of the Landlords, N.H. testified the Landlords' Notice of Dispute Resolution Hearing package and a subsequent documentary evidence package were served on the Tenants by Express Post requiring signature. On behalf of the Tenants, K.I. acknowledged receipt of both packages. Further, K.I. testified the Tenants' Notice of Dispute Resolution Hearing package was served on the Landlords by Express Post. N.H. acknowledged receipt on behalf of the Landlords. No issues were raised with respect to service or receipt of the above documents during the hearing. The parties were in attendance and were prepared to proceed. Therefore, pursuant to section 71 of the *Act*, I find the parties were sufficiently served with the above documents for the purposes of the *Act*.

All in attendance were provided with the 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

1. Are the Landlords entitled to an order of possession?
2. Are the Landlords entitled to recover the filing fee?
3. Are the Tenants entitled to an order cancelling the One Month Notice?
4. Are the Tenants entitled to an order with respect to a disputed rent increase?

Background and Evidence

The tenancy agreement submitted into evidence confirms the rental property is a 2-level house with 4 bedrooms, 2 bathrooms, and 2 kitchens. The tenancy agreement confirms the tenancy began on September 1, 2015. Rent in the amount of \$2,200.00 per month is due on the first day of each month. The Tenants paid a security deposit in the amount of \$1,100.00, which the Landlords hold.

The Landlords wish to end the tenancy. Accordingly, the Landlords issued the One Month Notice, which was served on the Tenants by registered mail on September 10, 2019. The Tenants' Application confirms receipt on September 11, 2019. The One Month Notice was issued on the following bases:

- Tenants have allowed an unreasonable number of occupants in the unit/site.
- Tenants have assigned or sublet the rental property/site without the Landlords' written consent.

N.H. testified that the Tenants have allowed more than the permitted number of occupants set out in the tenancy agreement. The Landlords rely on the tenancy agreement which states:

Only the names shown here (and their children) may reside in these premises. This includes no subletting.

[Reproduced as written.]

Although unsure of the precise number of occupants, N.H. testified to her belief that there have been four or more occupants in the rental property. N.H. testified that the Landlords have observed a number of cars in the driveway and that the water bill has increased significantly. N.H. also testified that there was no verbal or written agreement to allow more than 3 occupants to reside in the rental property. N.H. stated the Landlords do not know for certain how many occupants are living in the rental property but want clarification. N.H. also confirmed the Landlords' desire for the tenancy agreement to reflect the additional occupants and for rent and responsibility for payment of water service to be adjusted accordingly.

The Tenants acknowledged there are currently 4 permanent occupants living in the rental property: A.I., K.I., R.C., and A.N. K.I. testified that A.N. has lived in the rental property since the beginning of the tenancy with the knowledge of the Landlords. N.H. disagreed with this assertion and testified she did not meet A.N. until September 2, 2019. K.I. also testified that she has not received evidence to confirm the increased cost of water service at the rental property.

In addition, the parties agreed the Landlords have not issued a notice of rent increase in the approved form but have requested a rent increase to reflect the number of occupants in the rental property. Further, the parties agreed the rental property has not been sublet and that the tenancy agreement has not been assigned.

Analysis

Based on all of the above, the evidence and unchallenged testimony, and on a balance of probabilities, I find:

Section 47(1)(c) of the *Act* permits a landlord to take steps to end a tenancy when there are an unreasonable number of occupants in the rental property. In this case, the parties confirmed there are currently 4 occupants living in the rental property. However, I find there is insufficient evidence before me to conclude there are an *unreasonable* number of occupants in the rental property. First, the clause reproduced above contemplated additional occupants. Specifically, it confirmed that “children” (plural) of the 3 Tenants would be permitted to reside in the rental property. Second, I accept the Tenants’ testimony that A.N. has lived in the rental property with the knowledge of the Landlords since the tenancy began. That N.H. did not meet A.N. until September 2, 2019 is not sufficient to satisfy me that A.N. has not lived in the rental property for that period. Finally, I note the Landlords’ willingness to continue the tenancy with a corresponding rent increase and reallocation of responsibility for water service. This suggests the problem is not the number of occupants in the rental property, but the amount of rent received.

As noted above, the parties agreed the rental property has not been sublet and that the tenancy agreement has not been assigned. The parties also agreed the Landlords have not issued a notice of rent increase in the approved form. Therefore, I find it has not been necessary to address these aspects of the parties’ applications.

Considering the above, I find there are not an unreasonable number of occupants in the rental property. As a result, I find the Tenants’ Application to cancel the One Month Notice is successful and the Landlords’ Application for an order of possession is dismissed. The tenancy will continue until otherwise ended in accordance with the *Act*.

Conclusion

The Landlords' Application is dismissed, without leave to reapply.

The Tenants' Application to cancel the One Month Notice is successful. 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: November 15, 2019

Residential Tenancy Branch