



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding DEVON PROPERTIES and
[tenant name suppressed to protect privacy]

DECISION

Dispute Codes:

CNC AND FFT

Introduction

This hearing was convened in response to the Tenants' Application for Dispute Resolution, in which the Tenants applied to set aside a Notice to End Tenancy for Cause and to recover the fee for filing this Application for Dispute Resolution.

The Tenant stated that on September 12, 2020 the Dispute Resolution Package and evidence the Tenants submitted to the Residential Tenancy Branch were sent to the Landlord, via registered mail. The Agent for the Landlord acknowledged receipt of these documents and the evidence was accepted as evidence for these proceedings.

On October 07, 2020 the Landlord submitted evidence to the Residential Tenancy Branch. The Agent for the Landlord stated that this evidence was posted on the Tenants' door on October 09, 2020. The Tenant acknowledged receiving this evidence and it was accepted as evidence for these proceedings.

The participants were given the opportunity to present relevant oral evidence, to ask relevant questions, and to make relevant submissions. Each participant affirmed that they would speak the truth, the whole truth, and nothing but the truth during these proceedings.

Issue(s) to be Decided

Should the Notice to End Tenancy for Cause, served pursuant to section 47 of the *Residential Tenancy Act (Act)*, be set aside?

Background and Evidence

The Landlord and the Tenant agree that:

- This tenancy began on May 01, 2020;
- The parties signed a tenancy agreement which identifies the Applicant with the initials “SP”, hereinafter referred to as the Tenant, as the only occupant;
- Prior to the tenancy agreement being signed the “leasing agent” informed the Tenant that the male applicant would have to complete “the application process” before he would be permitted to live in the rental unit;
- The tenancy agreement requires the Tenant to pay rent of \$1,715.00 by the first day of each month;
- On July 31, 2020 the Landlord sent the Tenant a letter, in which the Landlord declared that building manager has had “several conversations” in which he advised the Tenant that the male applicant “needs to be added to the lease”;
- In the July 31, 2020 letter, the Landlord declares that the Tenant has “still failed to complete this paperwork for approval” for the male applicant to reside in the building;
- In the July 31, 2020 letter, the Landlord reminds the Tenant that the tenancy agreement declares that it is a “material breach of the lease to allow another resident to reside without the written approval of the Landlord”;
- In the July 31, 2020 letter, the Landlord quotes term 22 of the tenancy agreement;
- On August 21, 2020, the Tenant offered to pay an additional \$100.00 per month because the male applicant had moved into the tenancy agreement;
- The Landlord did not accept the offer of the additional \$100.00 per month;
- On September 01, 2020 the Tenant was personally served with a One Month Notice to End Tenancy for Cause, which declared that she must vacate the unit by September 30, 2020;
- The One Month Notice to End Tenancy for Cause declared that the tenancy is ending because the Tenant has breached a material term of the tenancy that was not corrected within a reasonable time of receiving written notice to do so; and
- The Tenant and the male applicant are still occupying the rental unit.

Term 22 of the tenancy agreement reads:

Occupants: Only the person(s) listed in this clause are permitted to occupy the Rental Unit or residential premises. Any additional occupant(s) or Tenant(s) apart from those identified in this Agreement must receive the prior written consent of the Landlord in order to occupy the Rental Unit or residential premises. Subject to the Landlord's prior written approval, any additional occupants will be subject to an additional monthly fee of \$100.00 per additional occupant and added to the rent payable for the Rental Unit under this Agreement effective from the first day of the month the additional occupant occupies the Rental Unit. The Landlord's acceptance of any additional Tenant(s) or occupant(s) does not otherwise change this Agreement or create a new tenancy. A person not listed in this Agreement whom, without the Landlord's prior written consent, resides in the Rental Unit or on the residential premises in excess of seven (7) cumulative days in a calendar year will be considered to be an unauthorized occupant of the Rental Unit or residential premises, and not a guest, contrary to this Agreement and without right or permission from the Landlord. This unauthorized occupant will be considered a trespasser. It is a material term of this Agreement that the Tenant obtains the prior written consent of the Landlord for any additional occupant(s) or Tenant(s). Failure to obtain the Landlord's prior written consent for any additional occupant(s) or Tenant(s) constitutes a breach of a material term of this Agreement for which the Landlord may serve a notice to end tenancy in accordance with the Act.

The Agent for the Landlord stated that:

- The Landlord seeks to end this tenancy because the Tenant breached term 22 of the tenancy agreement;
- Term 22 of the agreement is a material term of the tenancy agreement;
- In May or June of 2020, the male applicant informed the resident manager that he was living in the rental unit, although she does not know if he declared he was living in the unit on a full-time basis at that time;
- In May or June of 2020, the male applicant informed the resident manager that he was paying half of the rent;
- She does not know when the male applicant moved into the unit on a full-time basis;
- She believes the Tenant asked the resident manager if the male applicant could live in the rental unit without being added to the tenancy agreement as a tenant;
- Company policy requires all occupants to qualify to be added to the lease as tenants if they are to live with a tenant of the residential complex;
- The Tenant was informed on several occasions, both verbally and in writing, that the male applicant needed to be named as a tenant if he was living in the rental unit;

- On August 21, 2020 the Tenant apologized for the delay in completing the application to have the male applicant added to the tenancy agreement;
- On August 21, 2020 the Tenant declared that she would be completing the application but that the male applicant would likely not qualify to be named as a tenant due to his credit rating;
- On August 21, 2020 the Tenant offered to be a guarantor for the male applicant and she was informed that she would not be accepted as a guarantor, as the Tenant had required a guarantor for her own tenancy;
- A completed application form was received on September 01, 2020;
- A guarantor was never provided for the male applicant;
- The Landlord did not request any additional information from the Tenant after the application was received on September 01, 2020;
- By the time the application was received on September 01, 2020 the Landlord determined that the male applicant should not be accepted as a tenant due to issues with alleged noise and inappropriate behavior; and
- The male applicant would likely have been accepted as a tenant if the Tenant had submitted the proper paper work shortly after receiving the letter dated July 31, 2020.

The Tenant stated that:

- The male applicant stayed at the rental unit periodically in May, June, and early July of 2020;
- The male applicant moved into the rental unit, on a full time basis, in mid-July;
- Prior to the male applicant moving into the unit on a full time basis, she asked the resident manager if the male applicant could live in the rental unit without being added to the tenancy agreement as a tenant;
- The application to have the male applicant added to the tenancy agreement was completed sometime in August of 2020;
- The application was not approved because the Landlord required a guarantor for the male applicant;
- There was a delay in finding the guarantor;
- The guarantor submitted the required paperwork sometime in August of 2020.

Analysis

Section 47(1)(h) of the *Residential Tenancy Act (Act)* authorizes a landlord to end a tenancy by giving notice to end the tenancy if the tenant has failed to comply with a material term and has not corrected the situation within a reasonable time after the

landlord gives written notice to do so. On the basis of the undisputed evidence I find that on September 01, 2020 the Landlord served the Tenant with a One Month Notice to End Tenancy for Cause, which gave her notice of the Landlord's intent to end the tenancy pursuant to section 47(1)(h) of the *Act*.

The Landlord submits that the Tenant breached term 22 of the tenancy agreement, which the Landlord contends is a material term of the tenancy. This term reads, in part:

It is a material term of this Agreement that the Tenant obtains the prior written consent of the Landlord for any additional occupant(s) or Tenant(s). Failure to obtain the Landlord's prior written consent for any additional occupant(s) or Tenant(s) constitutes a breach of a material term of this Agreement for which the Landlord may serve a notice to end tenancy in accordance with the *Act*.

Residential Tenancy Branch Policy Guideline #8 reads, in part:

A material term is a term that the parties both agree is so important that the most trivial breach of that term gives the other party the right to end the agreement.

To determine the materiality of a term during a dispute resolution hearing, the Residential Tenancy Branch will focus upon the importance of the term in the overall scheme of the tenancy agreement, as opposed to the consequences of the breach. It falls to the person relying on the term to present evidence and argument supporting the proposition that the term was a material term.

The question of whether or not a term is material is determined by the facts and circumstances surrounding the creation of the tenancy agreement in question. It is possible that the same term may be material in one agreement and not material in another. Simply because the parties have put in the agreement that one or more terms are material is not decisive. During a dispute resolution proceeding, the Residential Tenancy Branch will look at the true intention of the parties in determining whether or not the clause is material.

I find that term 22 of the tenancy agreement should be considered a material term of the tenancy agreement. I find that the Tenant knew, or should have known, the importance of this term because:

- The tenancy clearly identifies the term as a material term and that a breach of it could result in the end of the tenancy;
- Before the Tenant signed the tenancy agreement, she was clearly informed that she needed the Landlord's permission to have a second occupant living in the unit;

- The Tenant was informed on several occasions that the male applicant needed to be named as a tenant if he was living in the rental unit; and
- The Tenant was informed, in writing, on July 01, 2020 of the need to have written permission for a second occupant and that it is a “material breach of the lease to allow another resident to reside without the written approval of the Landlord”.

I find that term 22 of the tenancy agreement requires that the Tenant “receive the prior written consent of the Landlord” before any additional occupants can occupy the rental unit. I find that this is entirely different than a requirement to have an additional occupant added to the tenancy agreement as a tenant, which appears to be the interpretation of the Landlord. Requiring a tenant to add another occupant to the tenancy agreement as a tenant requires the original tenant to enter into a contractual agreement with the “new” tenant, which may not be in the best interests of the original tenant.

I find that the Landlord made it difficult for the Tenant to comply with term 22 of the tenancy agreement because the Landlord assumed the position that it had the right to demand that the male applicant be added to the tenancy agreement as a tenant.

On the basis of the testimony of the Tenant and in the absence of any evidence to the contrary, I find that the Tenant asked the resident manager if the male applicant could live in the rental unit without being added to the tenancy agreement sometime prior to him moving into the rental unit on a full time basis. Had the Landlord simply provided the Tenant with written permission for the male applicant to reside in the rental unit as an occupant on the basis of that initial verbal request, the Tenant would not be in breach of term 22.

As the Landlord failed to grant the Tenant’s verbal request for permission to have the male applicant live in the unit, I find that the Landlord directly contributed to the Tenant breaching term 22 of the tenancy agreement. I therefore find that the Landlord no longer has the right to end this tenancy because the Tenant does not have written permission to have the male applicant live in the rental unit. In reaching this conclusion I was heavily influenced by the Agent for the Landlord’s testimony that the male applicant would likely have been accepted as a tenant if the Tenant had submitted the proper paper work shortly after receiving the letter dated July 31, 2020.

For these reasons, I grant the Tenant’s application to set aside this One Month Notice to End Tenancy for Cause.

To provide clarity to this tenancy, the Tenant remains obligated to pay the additional \$100.00 in monthly rent for any month that the male applicant is living in the unit on a full-time basis, as is required by term 22 of the tenancy agreement.

To provide additional clarity to this tenancy, the Tenant remains obligated to request written permission to have any other additional occupants live in the rental unit, as is required by term 22 of the tenancy agreement. The Landlord has the right to deny such a request for reasonable reasons, providing that reason has nothing to do with the new occupant not applying to be named as a tenant on the tenancy agreement.

In adjudicating this matter, I have placed no weight on the evidence that the Tenant and/or the male applicant have created disturbances in the residential complex, as the Landlord did not serve a One Month Notice to End Tenancy for Cause for that reason. The Landlord retains the right serve another One Month Notice to End Tenancy for Cause if the Landlord believes there are grounds to end the tenancy for these alleged disturbances.

I find that the Tenant's Application for Dispute Resolution has merit and that she is entitled to recover the \$100.00 fee for filing this Application for Dispute Resolution. I therefore authorize the Tenant to reduce one monthly rent payment by \$100.00 in full compensation for the cost of filing the Application for Dispute Resolution.

Conclusion

The One Month Notice to End Tenancy for Cause is set aside. This tenancy shall continue until it is ended in accordance with the *Act*. The Tenant has been granted authority to reduce one monthly rent payment by \$100.00.

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 20, 2020

Residential Tenancy Branch