



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC

Introduction

This hearing dealt with an application pursuant to the *Residential Tenancy Act* (the “**Act**”) to cancel the landlord’s One Month Notice to End Tenancy for Cause (the “**Notice**”) pursuant to section 47.

The applicants attended the hearing. The respondent landlord was represented at the hearing by its property manager (“**ZZ**”) and caretaker (“**FH**”). All were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

KD testified that he served the landlord with the notice of dispute resolution form and supporting evidence package. The evidence package was served five days before the hearing. ZZ confirmed service, and stated that he had enough time to review the evidence and did not object it being admitted into the evidentiary record of this hearing, despite it being served only five days prior to the hearing.

ZZ testified, and the tenants confirmed, that the landlord served them with their evidence package.

I find that all parties have been served with the required documents in accordance with the Act.

Issues to be Decided

Are the applicants entitled to an order cancelling the Notice?

Background and Evidence

While I have considered the documentary evidence and the testimony of the parties, not all details of their submissions and arguments are reproduced here. The relevant and important aspects of the parties’ claims and my findings are set out below.

AT and an agent of the prior owner of the residential building (“CB”) entered into a written tenancy agreement starting October 1, 2018. Monthly rent is \$822 and is payable on the first of each month. AT paid CB a security deposit of \$450. KD testified that the applicants paid a pet damage deposit of \$300 to CB in May 2019, when they adopted a dog. ZZ testified that the landlord has no record the pet damage deposit. ZZ confirmed that the landlord holds the damage deposit in trust for AT.

ZZ testified that about 14 months ago, the respondent landlord purchased the residential property from the prior owner. He testified that they received all the files from the prior owner, although any copies of tenants’ driver’s licenses were likely destroyed by the prior owner before being turned over, in keeping with the relevant privacy legislation.

ZZ testified that in August 2020, following an altercation between KD and some plumbers hired by the landlord, he became aware that KD was residing in the rental unit. He testified that he discovered this when he received the landlord’s file for the rental unit and found it contained AT’s information only.

ZZ testified that the landlord requires the information of all occupants in the residential property to be on file. He said this is necessary so the landlord can provide assistance to those who live in the residential property (for example, if an occupant is not on file, the landlord cannot determine if they live in the rental unit and will not provide access to the rental unit to them, should they become locked out).

ZZ testified that he asked KD to complete a “tenant application form” so that the landlord could have KD’s information on file. KD refused.

KD testified that he refused to complete the “tenant applicant form” provided to him by the landlord because he believed that the landlord would use it as a pretext to evict him (that is, deny his application).

As such, the landlord prepared the Notice and served it on the tenant on September 25, 2020. KD confirmed service of the Notice on this date. The Notice indicated an effective date of October 31, 2020.

The grounds to end the tenancy cited in that Notice were:

- 1) the tenant has allowed an unreasonable number of occupants in the unit; and
- 2) breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.

ZZ testified KD was an unauthorized occupant of the rental unit, and as such, AT has allowed an unreasonable number of occupants in the unit. He argued that by doing so AT has also breached a material term of the tenancy agreement.

KD testified that he is AT’s common law husband. He testified that, when AT signed the tenancy agreement, he was working as an iron worker and was often away from home

for long stretches. As such, he wanted to have AT, and not his, name on the tenancy agreement.

KD testified that after the tenancy started, AT sought CB's permission to allow KD to live in the rental unit and that CB granted this permission. He provided her with a copy of his driver's license for CB's file. The tenants entered a statement letter from CB into evidence in which she wrote:

I worked [at the residential property as property manager] from June 2011 to June 2019. [...] [AT] moved into [the rental unit] approximately Christmas 2018. At such time she moved in by herself. A few weeks later she had asked me if her boyfriend [KD] could move in with her as he was supposed to be going away for work and it got cancelled. I had met [KD] on a few occasions and had absolutely no problem with him he was polite well mannered I never had any issues with him. [...] Just to note when I was the manager there and they came to ask for permission for him to move in all he needed to do at that point was to give me his name and full phone number and a picture ID. Which he did and there was no issues. As far as I was concerned they both lived in the apartment they both kept it clean and they both paid rent if I'm not mistaken the rent does come out of his bank account.

[sic throughout]

KD testified that when the landlord purchased the residential property, it stopped accepting cash for rent payments (which AT and KD had previously used). He testified that he contacted the landlord's agent ("A", who ZZ confirmed was his assistant) and A provided him with banking details to the tenants could e-transfer their rent to the landlord. KD testified that rent payments come from his bank account. He submitted a copy of his bank statement showing this.

ZZ testified that A would not have cross-checked KD's name with the tenant list on file before providing e-transfer details. Rather, he would simply provide the caller with the "t-code" for the caller to use when paying rent for a particular rental unit. ZZ did not deny that the CB permitted KD to reside in the rental unit.

Analysis

Rule of Procedure 6.6 states:

6.6 The standard of proof and onus of proof

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed.

The onus to prove their case is on the person making the claim. In most circumstances this is the person making the application. However, in some situations the arbitrator may determine the onus of proof is on the other party. For example, the landlord must prove the reason they wish to end the tenancy when the tenant applies to cancel a Notice to End Tenancy.

So, the landlord must satisfy me on balance of probabilities that the Notice is valid, that TA has breached a material term of the tenancy agreement and allowed an unreasonable number of occupants in the rental unit.

Before addressing these two issues, however, I must first determine if KD is an authorized occupant of the rental unit. If he is, then this application is moot, as his presence in the rental unit cannot be unreasonable, and AT cannot be said to have breached a material term of the tenancy agreement.

I accept KD's unrefuted testimony that he has resided in the rental unit since 2018 and that the rent payments currently come out of his bank account. Based on his testimony which was corroborated by CB's letter, I find that AT asked CB permission to allow KD to move into the rental unit and that CB gave her permission. I acknowledge that there are some small discrepancies between CB's email and KD's testimony (such as the date of the of the tenancy and the date when KD became paying rent from his account). However, I do not find that these discrepancies diminish the corroborative effect of CB's letter. Such small discrepancies are to be expected as CB stopped managing the residential property over a year ago and does not have the benefit of the tenants' file to refresh her memory.

I find CB's statement that she agreed to allow KD to move into the rental unit to be credible and corroborative of KD's testimony.

As such, I find that CB, on behalf of the prior owner, authorized KD to be an occupant of the rental unit by the agent of the prior owner of the residential property. This permission is not revoked by dint of the residential property having new owners, just as a tenancy agreement cannot be revoked for the same reason. I find that the CB's authorization has the effect of amending the tenancy agreement to allow KD to occupy the rental unit.

I accept ZZ's testimony that the rental unit's file provided to the landlord by the prior owner does not contain any information regarding KD. ZZ's explanation that CB may have destroyed it to adhere to privacy legislation is a possible reason why this might be the case. I accept KD's testimony, as corroborated by CB's letter, that he provided his contact information and a copy of his driver's license to CB.

The fact that the current landlord does not have this information does not revoke CB's permission to allow KD to occupy the rental unit. This lack of information is not due to any fault of AT or KD, and as such, they should not suffer consequences as a result.

For these reasons, I find that KD is an authorized occupant of the rental unit. According, I do not find that AT has permitted an unreasonable number of occupants in the rental unit and I do not find that she has breached any term (let alone a material term) of the tenancy agreement by permitting KD to occupy the rental unit.

I therefore order that the Notice is cancelled and of no effect.

Conclusion

The Notice is cancelled and of no effect. The tenancy shall continue.

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: December 3, 2020

Residential Tenancy Branch