



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding V7 PROPERTIES LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC

Introduction

On March 22, 2021, the Tenant submitted an Application for Dispute Resolution under the *Residential Tenancy Act* (the “Act”) requesting to cancel a One Month Notice to End Tenancy for Cause. The matter was set for a participatory hearing via conference call.

The Landlord, the Tenant and the Tenant’s advocate attended the hearing and provided affirmed testimony. They were provided the opportunity to present their relevant oral, written and documentary evidence and to make submissions at the hearing. The parties testified that they exchanged the documentary evidence that I have before me.

Issues to be Decided

Should the One Month Notice to End Tenancy for Cause, dated March 10, 2021 (the “One Month Notice”) be cancelled, in accordance with section 47 of the Act?

If the One Month Notice is not cancelled, should the Landlord receive an Order of Possession, in accordance with section 55 of the Act?

Background and Evidence

I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Both parties agreed to the following terms of the tenancy:

The month-to-month tenancy began on January 30, 2017. The rent is \$400.00 and due on the first of each month. The Landlord collected and still holds a security deposit in the amount of \$200.00.

The Landlord testified that the issue of the Tenant having someone move in with him has been a reoccurring issue. The Landlord reviewed the Tenancy Agreement during the hearing and noted that the only person on the Tenancy Agreement is the Tenant. The Landlord described the rental property as an all-male rooming house that has single-room occupancy. The Landlord acknowledged that there was no specific term on the Tenancy Agreement that identified the rental unit to be used for the sole use of one occupant; however, she submitted several letters that reminded the Tenant over the last few years that the room is set up for single occupancy only.

The Landlord also submitted correspondence between herself, the Tenant and the Tenant's advocate (who is currently living with the Tenant) and stated that the dialogue between them demonstrated that the Tenant was aware of the single occupancy term and intention of the Tenancy Agreement.

The Landlord submitted a letter, delivered to the Tenant on September 12, 2020, which noted that an unauthorized person had been occupying the rental unit, along with the Tenant, for an extended period of time. The letter stated that the Tenant was in breach of the Tenancy Agreement and reminded the Tenant that the building is set up for single occupancy only in each of the rooms.

The Landlord submitted an email that the Tenant sent her on September 14, 2020. The Tenant indicated that his guest (advocate) was not permanent, that he did not consider her a roommate or co-tenant, rather "only a temporary guest who has had an extended stay due to special circumstances." The Tenant requested that the Landlord allow the guest to stay until she had found housing.

The Landlord testified that she served the One Month Notice, by placing a copy on the Tenant's door on March 10, 2021. The move-out date of April 30, 2021 was included on the One Month Notice. The reasons for the end of tenancy were as follows:

- The Tenant has allowed an unreasonable number of occupants in the unit.
- The Tenant or a person permitted on the property by the Tenant has significantly interfered with or unreasonably disturbed another occupant.
- The Tenant or a person permitted on the property by the Tenant has seriously jeopardized the health or safety or lawful right of another occupant or the Landlord.
- Breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.

The Landlord stated that the main issues are that the Tenant has invited a guest to permanently occupy the rental unit without any permission from the Landlord and that the Tenant is breaching the intention of the Tenancy Agreement; specifically, that the rental unit is for a single occupant only.

The Landlord stated that the Tenant has paid his rent for July 2021 and is requesting an Order of Possession for July 31, 2021.

The Tenant, along with his advocate, testified that the Tenancy Agreement doesn't stipulate that there cannot be a second occupant or that the tenancy is strictly for one person.

The Tenant stated that there is no intention for the advocate to enter into a tenancy agreement with the Landlord and confirmed that the arrangement is temporary.

The Tenant is requesting to cancel the One Month Notice and continue the tenancy.

Analysis

Under section 47 of the Act, the Landlord may end the tenancy for specific reasons. In this case, the Landlord has submitted that the Tenant has allowed an unreasonable number of occupants in the unit. The Landlord submitted that the rental unit is for the use of a single tenant. Although the Tenancy Agreement doesn't specifically state this, the Landlord has been consistent with this message throughout the tenancy.

Based on the testimony of both the parties, I find that the Tenant has had an unauthorized occupant living with him in the rental unit. I reference the Tenant's admission that the advocate has been living in the rental unit for over one year, that she is not on the Tenancy Agreement and, that the Tenant does not have permission from the Landlord for the advocate to reside in the unit.

I find that the Tenant understands that the intention for the rental unit is that it is for single occupancy only. I accept both parties' submissions that there is not a specific term in the Tenancy Agreement that states this condition.

I accept the Landlord's undisputed testimony that she served the One Month Notice to the Tenant with multiple reasons to end the tenancy. I find that the Landlord, during the hearing, only focused on the issue of having an unreasonable number of occupants in the unit. Based on the undisputed testimony and evidence of both parties, I find that there is not a specific term that limits the rental unit to a single occupant; regardless of the Tenant's understanding that this is the case.

After considering the Landlord's testimony and documentary evidence, I find that the Landlord has failed to provide sufficient evidence that the Tenant is in breach of the Tenancy Agreement and as such, I cancel the One Month Notice.

Section 62(3) of the Act authorizes an arbitrator to make any order necessary to give effect to the rights, obligations and prohibitions under this Act, including an order that a landlord or tenant comply with this Act, the regulations or a tenancy agreement and an order that this Act applies.

I have cancelled the One Month Notice and the tenancy will continue. I am also adding a term for this tenancy, pursuant to section 14(3)(c) of the Act, that will provide clarity regarding the use of the rental unit. Specifically, the Tenancy Agreement will, from the date of this Decision, include the following term:

The rental unit is for a single occupant only. The Tenant is the only person authorized to occupy the rental unit. If one or more persons is found to be living in the rental unit with the Tenant, this would be a material breach of the Tenancy Agreement and the Landlord may issue a One Month Notice to End Tenancy for Cause.

To provide the Tenant's "guest" a reasonable amount of time to move out of the Tenant's rental unit, and so the Tenant won't be breaching his Tenancy Agreement; I order the Tenant to remove his guest from the rental unit within 14 days of receiving this Decision.

Conclusion

The One Month Notice is cancelled, and the tenancy will continue until it is 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: July 07, 2021

Residential Tenancy Branch