



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, FF

Introduction

On March 23, 2021, the Tenants submitted an Application for Dispute Resolution under the *Residential Tenancy Act* (“the Act”) seeking to cancel a One Month Notice to End Tenancy for Cause dated March 21, 2021, (“the One Month Notice”).

This matter was set for hearing by telephone conference call at 11:00 am on this date. The Landlord and Tenants appeared at the hearing.

The hearing process was explained, and the participants were asked if they had any questions. Both parties provided affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form and make submissions to me. The parties were informed that recording the hearing is not permitted.

The Landlord confirmed that she received a copy of the Tenants’ documentary evidence. The Landlord did not provide any documentary evidence to the RTB or the Tenants.

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.

Issue to be Decided

- Does the Landlord have sufficient cause to end the tenancy?

Background and Evidence

The Landlord and Tenant testified that the tenancy began on December 1, 2019 as a one-year fixed term tenancy that was then renewed for further year. Rent in the amount of \$1,600.00 is due to be paid to the Landlord by the first day of each month. The Tenants paid the Landlord a security deposit of \$800.00.

The Landlord served the One Month Notice to the Tenants. The Landlord cited the following reason for ending the tenancy:

- *Tenant has allowed an unreasonable number of occupants in the unit /site.*

The One Month Notice provides information for Tenants who receive the Notice. The Notice provides that a Tenant has the right to dispute the Notice within 10 days after receiving it by filing an Application for Dispute Resolution at the Residential Tenancy Branch

The Tenants disputed the One Month Notice on March 23, 2021 within the required time period.

With regard to the reason for ending the tenancy the Landlord testified that the tenancy addendum provides that there is to be no subletting or assignment of the tenancy. She testified that her property manager informed her that an adult female was observed in the rental unit and it appeared she was living there.

The Landlord testified that on March 20, 2021 she called the Tenants and was informed that the Tenants sister had been living in the rental unit.

The Landlord stated that this is an unreasonable number of occupants in the unit because the tenancy agreement addendum provides that no additional occupants are permitted to live in the rental unit without approval. The Landlord referred to the Tenants' documentary evidence of the tenancy addendum as follows:

9 in the contract in null and void. Absolutely no subletting or assigning another person to the rental until. All people residing at the property will be made known to the landlords prior to contract signing. Landlords will be promptly notified if an occupant moves out of the property. Any new potential occupants will be screened by the landlords. No person will move into the property without landlord's approval.

The Landlord was asked whether or not the parties agreed that the term is a material term of the tenancy and whether or not the Landlord issued any type of breach letter. The Landlord replied that no she did not issue a breach letter and that the addendum

does not speak about a material term. The Landlord issued the One Month Notice the day after she spoke to the Tenants.

The Landlord's response to me was delivered in moderately hostile tone and when she was asked about her tone, she replied that she is disgusted at how tenants are protected under the Act.

In response to the Landlord's testimony, the Tenant Ms. K.J. testified that the Landlord did call her on March 20, 2021. The Tenant testified that she never told the Landlord that somebody was living in the unit. She testified that she told the Landlord that somebody was visiting as their guest from out of province and would be returning home.

The Tenant also testified that her husband often works away from home for multiple days and his sister hangs out at the rental unit and helps out. The Tenant testified that her husband's sister does not live there and has not moved her possessions into the rental unit other than a change of clothes. She testified that there was never any exchange of rent as she was just hanging out and helping out.

When the Tenant was asked if her husband's sister maintains a residence elsewhere, she replied "yes".

The Tenant testified that her husband's sister was staying at the unit approximately two or three days per week since September 2020. The Tenant testified that her husband's sister stopped staying over as of March 20, 2021 when the Landlord raised the concern.

Analysis

In the matter before me, the Landlord has the burden to prove that the reasons for ending the tenancy in the Notice are valid and sufficient. Based on the evidence and testimony before me, I make the following findings:

I find that the tenancy agreement addendum prohibits subletting or assigning the tenancy to another person. I find that the Tenants were not subletting or assigning the tenancy because they were still living in the rental unit and did not enter into a tenancy agreement for another person to occupy the unit in exchange for rent.

I find that the Tenants' were simply permitting a family member to stay with them for a couple days each week. I accept their testimony that the family member maintained another residence elsewhere.

I accept the Tenants' testimony that they immediately stopped having the family member stay over after night after the conversation with the Landlord on March 20, 2021.

Section 1 (1) of the Tenancy Regulation schedule provides that terms may not contradict or change any right or obligation under the Residential Tenancy Act or a regulation made under that Act, or any standard term. If a term of a tenancy agreement does contradict or change such a right, obligation or standard term, the term of the tenancy agreement is void.

Section 9 of the Residential Tenancy Branch Regulation provides that the landlord must not stop the tenant from having guests under reasonable circumstances in the rental unit. 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.

Section 9 (3) provides that if the number of occupants in the rental unit is unreasonable, the landlord may discuss the issue with the tenant and may serve a notice to end a tenancy. Disputes regarding the notice may be resolved by applying for dispute resolution under the Residential Tenancy Act.

I find that term #2 of the Landlord's tenancy agreement addendum where it states that #9 in the contract is void is an unenforceable term. A term of a tenancy agreement is not enforceable if the term is inconsistent with the Act or the Regulations.

I find that the standard terms of tenancy apply to the tenancy agreement and specifically section 9 of the Regulations. I find that it is reasonable that the Tenants can have guests in the unit and to occasionally permit them to stay overnight in the rental unit. I find that there is insufficient evidence from the Landlord to establish that their guest is living in the rental unit full time. The Tenant's guest is a family member who maintains a separate residence and comes to hang out and assist family.

I find that the Tenants have not breached the term in their tenancy agreement.

I find that the Landlord has not provided sufficient evidence to support ending the tenancy; therefore, I cancel the One Month Notice to End Tenancy for Cause, dated March 21, 2021.

I order the tenancy to continue until ended in accordance with the Act.

Section 72 of the *Act* gives me authority to order the repayment of a fee for an application for dispute resolution. As the Tenants were successful with their application, I order the Landlord to repay the \$100.00 fee that the Tenants paid to make application for dispute resolution. I authorize the Tenants to withhold \$100.00 from one future rent payment.

Conclusion

The Tenant's application is successful. The One Month Notice issued by the Landlord dated March 21, 2021, is cancelled.

The tenancy will continue until ended in accordance with the Act.

I authorize the Tenant to withhold \$100.00 from one (1) future rent payment.

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 08, 2021

Residential Tenancy Branch