



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNQ, DRI, OLC, FFT

Introduction

This hearing was convened by way of conference call concerning an application made by the tenant seeking the following relief:

- an order cancelling a notice to end the tenancy;
- disputing a rent increase;
- an order that the landlord comply with the *Residential Tenancy Act*, regulation or tenancy agreement; and
- to recover the filing fee from the landlord for the cost of the application.

One of the tenants attended the hearing with an Advocate, and the named landlord also attended. The parties each gave affirmed testimony, and were given the opportunity to question each other and to give submissions.

At the commencement of the hearing, I alerted the parties to the Rules of Procedure which specify that multiple applications contained in a single application must be related. Given that the primary application deals with a notice to end the tenancy, I declined to hear or make any findings of fact or law with respect to the tenants' applications disputing a rent increase and for an order that the landlord comply with the *Act*, regulation or tenancy agreement.

During the course of the hearing, I determined that the tenants had not provided any evidentiary material to the landlord. Any evidence that a party wishes to rely on must be provided to the other party. Since the tenants have not done so, I decline to consider any of the tenants' evidence. The tenants' Advocate indicated that the landlord's evidentiary material has been received by the tenant, which was referred to in the

tenant's testimony. Therefore, all evidence of the landlord has been reviewed and is considered in this Decision.

Issue(s) to be Decided

Has the landlord established that the Two Month Notice to End Tenancy for Landlord's Use of Property or Because the Tenant Does Not Qualify for Subsidized Rental Unit was given in accordance with the *Residential Tenancy Act*, specifically with respect to the reason for issuing it?

Background and Evidence

The landlord testified that this month-to-month tenancy began on April 30, 2019 and the tenant still resides in the rental unit. Rent is subsidized and the tenant's share is \$595.00 payable on the 1st day of each month and there are no rental arrears. At the outset of the tenancy the landlord collected a security deposit from the tenant in the amount of \$671.00 which is still held in trust by the landlord, and no pet damage deposit was collected. The rental unit is a townhouse in a complex, and a copy of the tenancy agreement has been provided as evidence for this hearing.

The landlord further testified that on April 29, 2021 the landlord served the tenant with a Two Month Notice to End Tenancy for Landlord's Use of Property or Because the Tenant Does Not Qualify for Subsidized Rental Unit by handing it to an adult person who apparently resides with the tenant. A copy has been provided for this hearing and it is dated April 29, 2021 and contains an effective date of vacancy of June 30, 2021. The reason for issuing it states that the tenant no longer qualifies for the subsidized rental unit.

The tenancy agreement requires that all financial information for all occupants is required to be provided to the landlord, and no other occupants are permitted to reside in the rental unit without the landlord's consent. The tenant has not complied and have had 3 different people reside in the rental unit who are unauthorized and no financial information has been received. The tenant's nephew moved in at some point, and the tenant advised on June 30, 2020 that he had moved out. He was paying an additional \$320.00 per month. However, the landlord inspected the rental unit in June, 2021 and the nephew was sleeping in a bedroom in the basement and his girlfriend was there. It appears that the tenant is there with her 2 children and her nephew is still living in the basement. Also, another person appears to be living there as well as the father of the tenant's daughter. The tenant's aunt had also been there for some time, but the

landlord is not sure if she's still there. Guests are permitted, but are not permitted to remain for longer than 2 weeks. Photographs of people outside of the rental unit have been provided for this hearing, dated March 25 and 29 and 2 of different people dated April 6, 2021. Another photograph dated May 4, 2021 has also been provided. The landlord testified that the grounds keeper and video surveillance show the people in their bed clothes in the morning and in the evening. Statements of other occupants have also been provided for this hearing.

The landlord has also provided a copy of a Breach letter dated March 17, 2021 setting out the paragraph in the tenancy agreement dealing with occupants, which also states that the covenant is a reasonable material term of the tenancy agreement. It also states that if the landlord does not hear from the tenant within 10 days with a satisfactory resolution, the landlord will withdraw the subsidy effective April 1, 2021.

A second Breach Letter dated March 24, 2021 has also been provided which also deals with unauthorized occupants and requests a satisfactory resolution within 10 days.

The landlord received a written request from the tenant dated April 19, 2021 asking permission for a person to remain in the rental unit for the remainder of April to assist with caring for the tenant's 4 year old daughter. The landlord responded to the request stating that if the guest stayed past April 30, 2021 the subsidy will be removed.

The tenant testified that she and her son are very close and he visits pretty much every day. He works during the day, and if he doesn't visit the tenant, he calls. He stayed with the tenant in March, 2021 for about a week, but he is no longer residing there.

Another person, who is also close to the tenant and usually stays at a shelter comes by when he's hungry, or just to visit. He stayed with the tenant for almost 2 weeks.

A nephew of the tenant stayed for about a week, who was evicted from his rental unit but he found a new place probably in March, 2021.

Another woman got evicted as well and stayed with the tenant for more than a month, but now comes by once per week to clean for the tenant. The tenant gave a written request to the landlord and received a response stating that if she stayed beyond April 30 the subsidy will be removed. That person stopped staying at the rental unit at the end of May.

SUBMISSIONS OF THE LANDLORD:

The landlord's agents have tried speaking to the tenant to explain how the housing works – over 2 weeks during any calendar year is considered an occupant. The landlord understands family, but a tenant cannot have different family members staying over 2 weeks without providing their financial information. There must be clear information from all occupants. The tenant's son is still on the tenancy agreement and the landlord is still receiving rent from the Ministry on his behalf. It is evident that there's too many people at the rental unit at times contrary to the *Subsidized Housing Act*. If the tenant came forward and made a request, the landlord could get that on the agreement, but that's not happening. The landlord would work with the tenant, and if an Order of Possession was granted, the landlord would work with the tenant to find alternate housing. Breach letters have been issued, and the landlord submits that the friend who assisted the tenant by cleaning stayed past end of May.

SUBMISSIONS OF TNTs ADVOCATE:

The tenant admits that people have stayed sometimes for extended periods, but only the person who assisted the tenant with cleaning stayed longer but with permission. The tenancy agreement provided by the landlord speaks of a 12 month period, or calendar year. Other people are regular visitors which explains the photographs provided by the landlord. Beyond those and some written statements, there is not enough evidence that they stayed longer than 14 days.

Analysis

Where a tenant disputes a notice to end a tenancy given by a landlord, the onus is on the landlord to establish that it was given in accordance with the *Residential Tenancy Act*, which can include the reason(s) for issuing it. I have reviewed the Two Month Notice to End Tenancy for Landlord's Use of Property or Because the Tenant Does Not Qualify for Subsidized Rental Unit, and I find that it is in the approved form and contains information required by the *Act*. The reason for issuing it is in dispute.

I have reviewed all of the evidence provided by the landlord, including "Notes from File." The evidence also includes 2 Breach letters dated March 17 and March 24, 2021 both indicating that the tenant had unauthorized occupants living in the rental unit. The evidence also includes an email to the tenant from the landlord dated April 8, 2021 asking the tenant to provide a written request for the tenant's aunt to stay, and time frame. The tenant made a written request on April 19, 2021, stating that the guest helps care for the tenant's daughter seeking permission until the end of April, which was granted but not past April 30, 2021.

I also consider the notes made by the landlord's agents indicating that the person the tenant claims is living in a shelter was still at the rental unit on April 9, 2021 as well as the tenant's aunt, who had been there for at least a couple of months, with permission. It also states that the father of the child moved in "about 1.5 months ago," dated June 30, 2021.

The tenancy agreement is clear, and in the circumstances, I am not satisfied that the tenant has complied with the tenancy agreement, and I dismiss the tenant's application to cancel the Notice.

The *Residential Tenancy Act* specifies that where I dismiss a tenant's application to cancel a notice to end a tenancy given by a landlord, I must grant an Order of Possession in favour of the landlord, so long as the notice given is in the approved form. Having found that it is in the approved form, I grant an Order of Possession in favour of the landlord. Since the effective date of vacancy has passed, I grant the Order of Possession effective on 2 days notice to the tenant.

Conclusion

For the reason set out above, the tenant's application is hereby dismissed.

I hereby grant an Order of Possession in favour of the landlord effective on 2 days notice to the tenant.

This order is final and binding and may be enforced.

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 29, 2021

Residential Tenancy Branch