



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, FFT

Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution filed by the Tenants May 17, 2022 (the “Application”). The Tenants applied as follows:

- To dispute a One Month Notice to End Tenancy for Cause dated May 15, 2022 (the “Notice”)
- To recover the filing fee

The Tenants and Landlords appeared at the hearing. I explained the hearing process to the parties. I told the parties they are not allowed to record the hearing pursuant to the Rules of Procedure (the “Rules”). The parties provided affirmed testimony.

Both parties submitted evidence prior to the hearing. I confirmed service of the hearing package and evidence, and no issues arose.

The parties were given an opportunity to present relevant evidence and make relevant submissions. I have considered all evidence provided. I will only refer to the evidence I find relevant in this decision.

Issues to be Decided

1. Should the Notice be cancelled?
2. Are the Tenants entitled to recover the filing fee?

Background and Evidence

A written tenancy agreement was submitted, and the parties agreed it is accurate other than the rent amount which has been reduced by \$50.00.

The Notice was submitted. The grounds for the Notice are:

1. Tenant has allowed an unreasonable number of occupants in the unit/property
2. Tenant or a person permitted on the property by the Tenant has put the Landlord's property at significant risk.

The Details of Cause state:

December 20 at 17:54, someone was smoking weed in the downstairs suite when landlord arrived at home upstairs was full of smell of weed. Breached the condition of smoking on site and pour the risk to the health of landlord and property.

December 23 at 9:42am, keeping 3rd person in the suite without giving notice to landlord for 18 days. Warning was given.

Landlord has allergies from pet here, tenants signed the condition that they will maintain the cleanliness from pet hair in the unit but has not taken care of by tenants. Posted on social media about back entry railing is not secure instead of notifying to landlord that handrails need to be fixed. When landlord asked why she posted it on social media then [tenant] answered that she did not know that landlord is on tik tok. Everytime both tenants misbehaves if landlord ask them to correct their mistakes.

The parties agreed the Notice was served, and received by the Tenants, May 15, 2022.

In relation to the December 20, 2021 incident, the Landlords testified that someone was smoking marijuana in the rental unit. When asked how this put the Landlords' property at significant risk the Landlords testified that it puts their health at risk and that they think the Tenants may have removed the smoke alarm from the rental unit because it does not go off when they are smoking in the unit. The Landlords did not know if the Tenants have removed the smoke alarm, they simply thought this might be the case.

In relation to the December 23, 2021 incident, the Landlords testified that the Tenants had someone living with them from December of 2021 to January of 2022. The

Landlords testified that they did not know the third person was living with the Tenants. The Landlords testified that the rental unit has one bedroom. The Landlords pointed out that utilities are included in the rent, and they only rented the unit to the Tenants. The Landlords took the position that the Tenants must inform them of visitors or those staying with the Tenants. The Landlords relied on term 11 of the tenancy agreement for this issue. Term 11 of the tenancy agreement states:

11. OCCUPANTS AND GUESTS

1) The landlord must not stop the tenant from having guests under reasonable circumstances in the rental unit

2) 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,

2.1) Despite subsection (2) of this section but subject to section 27 on the Act [terminating or restricting services or facilities], the landlord may impose reasonable restrictions on guests' use of common areas of the residential property.

3) 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 through dispute resolution under the Residential Tenancy Act.

In relation to the issue about pets and allergies in the Details of Cause, the Landlords acknowledged this does not relate to putting the Landlords' property at significant risk.

In relation to the issue about the Tenants posting on social media in the Details of Cause, the Landlords explained that they simply do not like the Tenants doing this. The Landlords could not point to any law or rule outlined in the *Residential Tenancy Act* (the "Act"), *Residential Tenancy Regulation* or RTB Policy Guidelines that prohibits tenants from posting about a rental unit on social media.

In relation to the Tenants misbehaving as alleged in the Details of Cause, the Landlords acknowledged this does not relate to putting the Landlords' property at significant risk.

In response to the December 20, 2021 issue of the Tenants smoking marijuana in the rental unit, the Tenants testified that they have never smoked marijuana in the rental

unit. The Tenants also testified that they have not removed a smoke alarm in the rental unit, and in fact, there has never been a smoke alarm installed in the rental unit.

In relation to the December 23, 2021 issue of the Tenants having a visitor from December to January, the Tenants testified that Tenant T.S.'s father was visiting for Christmas and staying with the Tenants. The Tenants testified that T.S.'s father stayed from December 17 to 27, 2021. The Tenants testified that they told the Landlords about T.S.'s father visiting them. The Tenants agreed the rental unit is a one-bedroom unit and testified it is 1300 to 1400 square feet.

Analysis

The Notice was issued pursuant to section 47 of the *Act* and the following subsections:

47 (1) A landlord may end a tenancy by giving notice to end the tenancy if one or more of the following applies...

(c) there are an unreasonable number of occupants in a rental unit...

(d) the tenant or a person permitted on the residential property by the tenant has...

(iii) put the landlord's property at significant risk...

The Tenants had 10 days from receiving the Notice to dispute it pursuant to section 47(4) of the *Act*. There is no issue the Tenants received the Notice May 15, 2022. The Application was filed May 17, 2022, within time.

The Landlords have the onus to prove the grounds for the Notice pursuant to rule 6.6 of the Rules. The standard of proof is on a balance of probabilities meaning it is more likely than not the facts occurred as claimed.

The Notice was issued based on an unreasonable number of occupants in the rental unit and the Tenants putting the Landlords' property at significant risk. The issues resulting in the Notice must therefore be related to one of these two grounds.

In relation to the Tenants smoking marijuana in the rental unit on December 20, 2021, even accepting this occurred, it is not clear how this put the Landlords' property at

significant risk. Putting the Landlords' health at risk is not the same as putting the Landlords' property at risk. Further, I am not satisfied the Tenants removed the smoke alarm in the rental unit because the Tenants denied they did, and the Landlords did not actually know whether they did. I am not satisfied based on the evidence provided that the Landlords had grounds to issue the Notice based on this issue.

In relation to the December 23, 2021 incident, even accepting Tenant T.S.'s father stayed at the rental unit from December to January, I do not accept that this amounts to an unreasonable number of occupants in the rental unit. I accept that T.S.'s father was simply a visitor because the parties agreed T.S.'s father did not remain in the rental unit past January. The tenancy agreement does not limit guests and term 11 of the agreement does not support the Landlords' position. I do not agree that the Tenants were required to notify the Landlords that they were having a visitor stay with them. Having three people staying in a one-bedroom unit with a bathroom and kitchen for a month is not unreasonable. I do not find that the Landlords had grounds to issue the Notice based on this issue.

In relation to the pets and allergies issue as well as the Tenants misbehaving, these issues do not relate to either ground for the Notice and therefore I decline to uphold the Notice for these reasons.

In relation to the Tenants posting on social media, I do not find this is a breach of any tenancy related law or rule nor do I find this is a basis to end a tenancy. I decline to uphold the Notice for this issue.

Given the above, I find the Landlords did not have grounds to issue the Notice. The Notice is cancelled. The tenancy will continue until ended in accordance with the *Act*.

Given the Tenants have been successful in the Application, I award the Tenants reimbursement for the \$100.00 filing fee pursuant to section 72(1) of the *Act*. Pursuant to section 72(2) of the *Act*, the Tenants can deduct \$100.00 from their next rent payment as reimbursement for the filing fee.

Conclusion

The Application is granted. The Notice is cancelled. The tenancy will continue until ended in accordance with the *Act*.

The Tenants can deduct \$100.00 from their next rent payment as reimbursement for the filing fee.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Act*.

Dated: September 28, 2022

Residential Tenancy Branch