



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC FF

Introduction

This hearing was convened as a result of the Tenant's Application for Dispute Resolution. A participatory hearing, via teleconference, was held on November 21, 2022. The Tenant applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

- cancellation of the Landlord's 1 Month Notice to End Tenancy for Cause pursuant to section 47 (The Notice)

Both sides were present at the hearing. All parties provided affirmed testimony and were given a full opportunity to be heard, to present evidence and to make submissions.

Both parties confirmed receipt of each other's documentary evidence. No service issues were raised. I find both parties are sufficiently served for the purposes of this proceeding.

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(s) to be Decided

- Is the Tenant entitled to have the Notice cancelled?
 - If not, is the Landlord entitled to an Order of Possession?

Background and Evidence

The Tenant acknowledged receiving the Notice on June 28, 2022. The landlord issued the Notice for the following reasons:

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

Under the “Details of Cause” section, the landlord explained that the Tenant has her mother and father-in-law staying with her for 2 weeks per month for the next two years, while they apply for refugee status in Canada.

In the hearing, the Landlord testified that she had a conversation with the Tenant in May 2022, and at that time the Tenant confirmed that her mother and father-in-law (the “in-laws”) were moving to Canada in order to apply for refugee status. The Landlord stated that the in-laws came to Canada and stayed with the Tenants in late April or early May 2022, stayed for 2 weeks, then left again. The Landlord explained that sometime in June 2022, the in-laws came back to stay with the Tenant at the rental unit. The Landlord stated that this is a small, 1-Bedroom apartment, and is not appropriate for 4 adults.

The Landlord pointed to the tenancy agreement to show that the only two people authorized to reside in the rental unit are the two named Tenants. The Landlord asserts that the Tenant’s in-laws are more than just guests, and they are considered occupants considering how long they have stayed in the unit. The Landlord pointed to a series of text messages (translated) with the Tenant from late June 2022, showing conversations that the parties had about the tenancy, the Tenant’s guests/occupants, and also discussing ending the tenancy.

The Landlord explained that she is concerned with the strata rules and insurance coverage of the rental unit, given there are additional people staying in the rental unit. The Landlord asserts that the Tenant has failed to get Tenant’s insurance.

The Tenant denies that her in-laws have moved in or that they are considered occupants of the rental unit. The Tenant acknowledged that her in-laws came to stay with her when they arrived in Canada for 2 weeks, starting around April 21, 2022. A copy of the plane ticket was provided. The Tenant stated that her in-laws left after that two week period, and they went to stay at the Tenant’s sister-in-law’s house. Then, the Tenant stated that her in-laws came back for another 10 days towards the end of June 2022. However, it was at this point that the Tenant came to the realization that the rental

unit was not big enough to have her in-laws stay as guests. The Tenant stated that since that time, her in-laws have not been back, and they are now staying with the Tenant's sister-in-law. The Tenant stated that her in-laws are actually afraid of coming over to visit now because they are aware that the Landlord is trying to evict them.

The Tenant stated that the text messages the Landlord provided are not proof anyone actually moved in, and the Tenant asserts they were just part of an ongoing dialogue about future options, rather than a record of what actually happened.

Analysis

In the matter before me, the Landlord has the onus to prove that the reason in the Notice is valid.

I turn to the Notice issued by the Landlord and I find it meets the form and content requirements under section 52 of the *Act*. I note the Tenant received the Notice on June 28, 2022.

I note the Landlord and the Tenant, used to be friends, at the start of the tenancy, and that their relationship has since degraded. It appears the parties have had several conversations regarding ending the tenancy, and about ongoing family matters (immigration/residency matters, and guest/occupant status). I note some of these conversations were captured in the text message thread provided into evidence. However, I find there is insufficient evidence clearly demonstrating that the Tenant's in-laws were more than temporary guests for a couple of weeks in May, and again in June.

I note the Landlord asserts that the Tenant's in-laws are occupants of the rental unit, and that they are living in the unit more than the Tenant is acknowledging. However, the Tenant refutes this, and only admitted to her in-laws staying for 2 weeks in April/May 2022, and another 10 days in June 2022. Ultimately, I find the Landlord has provided insufficient evidence showing the Tenant's in-laws ever moved in and became occupants of the rental unit, or that this continues to be an issue.

I find that the Landlord has not provided sufficient evidence to support the reason to end the tenancy; therefore, the Tenant's application is successful and the Notice received by the Tenant on June 28, 2022, is cancelled. I order the tenancy to continue until ended in accordance with the *Act*.

As the Tenant was successful with the application, I grant the recovery of the filing fee against the Landlord. The Tenant may deduct the amount of \$100.00 from 1 (one) future rent payment.

Conclusion

The Tenant's application is successful. The Notice is cancelled.

The Tenant may deduct the amount of \$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: November 22, 2022

Residential Tenancy Branch