



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding PROLINE INVESTMENTS LIMITED
PARTNERSHIP and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OT, FFT

Introduction

This hearing was convened pursuant to the Tenant's Application for Dispute Resolution made on November 23, 2022. The Tenant applied for the following relief pursuant to the Residential Tenancy Act (the Act):

- an order granting other relief; and
- an order granting recovery of the filing fee.

At the request of the Tenant, the matter was scheduled to be heard by written submissions. In a decision dated December 9, 2022, the parties were advised that the hearing would be convened for the purposes of adjudicating the matter by written submissions. Specific details regarding the submission and service of evidence were provided in the decision.

The Tenant's written submissions and documentary evidence were submitted to the Residential Tenancy Branch on November 23, 2022 and January 30, 2023. A Canada Post registered mail receipt was submitted in support. The Landlord's written submissions confirm receipt of these documents on February 1, 2023.

The Landlord's written submissions and documentary evidence were submitted to the Residential Tenancy Branch on February 16, 2023. In support, the Landlord submitted a Canada Post registered mail receipt showing the date of service and providing a tracking number.

Considering the above, I am satisfied that the written submissions and documentary evidence relied upon by the parties was sufficiently served for the purposes of the Act, pursuant to section 71 of the Act. I have reviewed the written submissions and documentary evidence provided. However, only the evidence relevant to the issues and findings in this matter are described in this decision.

Issues to be Decided

1. Is the Tenant entitled to the requested relief?
2. Is the Tenant entitled to recover the filing fee?

Background and Evidence

The tenancy agreement submitted into evidence confirms the tenancy began on September 10, 1998. The Tenant pays monthly rent on the first day of each month. The tenancy agreement indicates that the Tenant paid a security deposit of \$307.50.

The Tenant seeks an order requiring the Landlord to add LG, the Tenant's boyfriend, as a party to the tenancy agreement.

In written submissions, the Tenant provided a history of his tenancy and of occupants in the rental unit. The Tenant advised that a former boyfriend, CG, lived in the rental unit in 2005, and again from 2010 to 2015. The Tenant submitted that the former landlord was aware of the situation and did not take steps to prevent the Tenant from doing so.

In addition, the Tenant stated that LG lived in the rental unit for roughly one-and-a-half years before being "evicted" by the Landlord in July 2021. However, LG recently expressed an interest in living with the Tenant in the rental unit. Accordingly, on October 18, 2022, the Tenant sent an email to LB, the Landlord's agent, requesting that LG be added to the tenancy agreement. LB declined and on October 19, 2022, advised that the Landlord would issue a notice to end tenancy if there were additional occupants in the rental unit contrary to the tenancy agreement. The Landlord's position was reiterated in an email to the Tenant dated November 14, 2022.

Subsequently, in an email from the Tenant to DC, the landlord's agent, dated January 12, 2023, the Tenant indicated he would be prepared to pay additional rent to cover costs associated with LG residing in the rental unit. This offer was also rejected in an email from DC to the Tenant dated January 20, 2023.

The Tenant asserts that the Landlord did not assess his additional occupant request by considering LG's work history, references, and the opinions of "local managers." Further, the Tenant submitted that the Landlord's actions have violated the "Canadian Code of Civil Rights" and have not taken the Tenant's mental health and desire for companionship into consideration.

In response, the Landlord relies on paragraph 9 of the tenancy agreement, which states:

ADDITIONAL OCCUPANTS. When a person who is not listed in paragraph 2 above resides in the premises for a period in excess of two weeks in any calendar year they shall be considered to be occupying the premises contrary to this Agreement and without the right or permission of the landlord. This person shall be considered as a trespasser. Where the tenant anticipates an additional person in the rental premises, they shall promptly apply in writing for permission from the landlord for such person to become a permanent occupant. Failure to apply and obtain the necessary approval of the landlord in writing is considered a fundamental breach of this Agreement. The landlord may at his option give immediate notice to end the Agreement or may at his option give notice to the tenant to immediately correct the breach. The landlord has the right to end the tenancy, if the tenant fails to correct the said breach within a reasonable time after having been given written notice by the landlord.

The Landlord also submitted a copy of an email from the Tenant to the Landlord's agent, dated July 12, 2021. In it, the Tenant acknowledged he was in contravention of paragraph 9 of the tenancy agreement and that the Landlord was entitled to ask LG to vacate the rental unit.

The Landlord also relies on Policy Guideline #13, which states:

If a tenant allows a person to move into the rental unit, the new person is an occupant who has no rights or obligations under the tenancy agreement, unless the landlord and the existing tenant agree to amend the tenancy agreement to include the new person as a tenant. Alternatively, the landlord and tenant could end the previous tenancy agreement and enter into a new tenancy agreement to include the occupant.

Before allowing another person to move into the rental unit, the tenant should ensure that additional occupants are permitted under the tenancy agreement, and whether the rent increases with additional occupants. Failure to comply with material terms of the tenancy agreement may result in the landlord serving a One Month Notice to End Tenancy for Cause. Where the tenancy agreement lacks a clause indicating that no additional occupants are allowed, it is implied that the tenant may have additional occupants move into the rental unit. The tenant on the tenancy agreement is responsible for any actions or neglect of any persons permitted on to the property by the tenant.

Analysis

In light of the written submissions and documentary evidence submitted by the parties, and on a balance of probabilities, I find:

I am unaware of and was not referred to any provision of the Act which empowers me to compel a landlord to enter into a tenancy agreement, in this case with LG. However, I note that Policy Guideline #13 provides a process whereby parties to a tenancy agreement can end a previous tenancy agreement and enter into a new tenancy agreement which includes a new occupant. In this case, the Landlord has declined to do so.

Whether or not LG can reside in the rental unit as an occupant was not an issue before me. However, for the information of the parties, Policy Guideline #13 confirms that a tenant should ensure that additional occupants are permitted under a tenancy agreement, and that failure to comply with a material term of the tenancy agreement may result in a landlord issuing a notice to end tenancy for cause.

Considering the above, I find the Act does not empower me to compel a landlord to enter into a tenancy agreement, in this case with LG. In addition, I am not satisfied that the Landlord was required to assess the Tenant's request to include LG as a tenant based on the criteria proposed by the Tenant.

Whether or not LG can reside in the rental unit as an occupant was not an issue before me.

The Tenant's application is dismissed without leave to reapply.

Conclusion

The Tenant's application is dismissed without leave to reapply.

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: March 15, 2023

Residential Tenancy Branch