



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding 1094321 BC Ltd
and [tenant name suppressed to protect privacy]

DECISION

Introduction

This hearing was convened in response to an application by the Tenant pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

1. An Order cancelling a notice to end tenancy - Section 47;
2. An Order to recover the filing fee for this application - Section 72.

The Parties were each given full opportunity under oath to be heard, to present evidence and to make submissions. The Parties confirmed receipt of each other’s evidence.

Issue(s) to be Decided

Is the Tenant entitled to a cancellation of the notice to end tenancy?

Is the Tenant entitled to recovery of the filing fee?

Background and Evidence

The following are agreed or undisputed facts: the tenancy started on March 1, 2017. A second tenancy agreement was executed by the same Tenant for a tenancy start date of September 1, 2018. Rent of \$3,045.00 is payable on the first day of each month. At the outset of the tenancy the Landlord collected \$1,500.00 as a security deposit. The Landlord served the Tenant with a one month notice to end tenancy for cause dated March 2, 2023 (the “Notice”). The reasons set out on the Notice is that there are an unreasonable number of occupants and that the tenant has put the property at significant risk. The Notice details that the Tenant is running a rooming house.

The Landlord states that there are 6 occupants in the unit that has 5 bedrooms and another room. The Landlord states that the municipal zoning does not allow for more than three unrelated persons in a unit. The Landlord confirms that they do not have any order from the municipality in relation to the occupation of the unit. The Landlord argues that only one tenant is named on the tenancy agreement and that the current number of occupants is unreasonable because the unit was intended for a single family. The Landlord states that the Landlord's insurance is based on the unit being occupied by a single family. The Landlord confirms that they provided no supporting insurance documents for the unit. The Landlord has no supporting evidence of the intention of the Landlord at the outset of the tenancy. The Landlord confirms that the tenancy agreement does not set out a maximum number of occupants. The Landlord provides no testimony or supporting evidence of any damage to the unit.

The Tenant states that there are seven occupants in the unit and that each occupant has their own bedroom. The Tenant states that the national guideline on occupancy sets out occupancy rates at 2 persons for each bedroom and argues that they are well within this guideline. The Tenant states that at the onset of the tenancy the Tenant had roommates and the Landlord was aware of this fact. The Tenant states that since the onset of the tenancy the number of roommates has remained stable.

Analysis

Section 47(1) of the Act provides that a landlord may end a tenancy by giving notice to end the tenancy if, inter alia, there are an unreasonable number of occupants in a rental unit and if the tenant or a person permitted on the property by the tenant has put the landlord's property at significant risk. There are no details in the Notice of the Tenant putting the property at any risk, let alone significant risk. The Landlord provided no supporting evidence of any risk. How the Landlord determines their own insurance coverage is not dependant on anything done by the Tenant and is therefore not relevant to the occupancy numbers or family make-up. For these reasons I find that the Notice is not valid for any significant risk to the property.

The Notice does not include as a reason that the municipality has made any order in relation to the occupancy of the unit and this evidence is therefore not relevant to the reasons in the Notice. While the Landlord characterizes the occupancy of the unit as being a rooming house, there is no evidence that the occupants are anything other than simply roommates. Further there is nothing in the tenancy agreement, Act or policy that restricts a rental unit from being a rooming house. The Landlord provided no supporting evidence of the number of occupants being greater than considered reasonable from any source. Given the Tenant's evidence of 7 occupants each having their own bedroom and considering the Tenant's evidence of national guidelines on reasonable occupancy rates I find that the Landlord has not substantiated that the number of occupants is unreasonable.

As the Notice does not contain any valid reasons, I find that the Tenant is entitled to a cancellation of the Notice and the tenancy continues. As the Tenant has been successful with their claim, I find that the Tenant is entitled to recovery of the \$100.00 filing fee and the Tenant may deduct this from future rent payable in full satisfaction of this claim.

Conclusion

The Notice is cancelled, and the tenancy continues.

I grant the Tenant an order under Section 67 of the Act for **\$100.00**. If necessary, this order may be filed in the Small Claims Court and enforced as an order of that Court.

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: May 17, 2023

Residential Tenancy Branch