



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes CNC, FF

Introduction

This matter dealt with an application by the Tenants to cancel a One Month Notice to End Tenancy for Cause dated November 26, 2010 and to recover the filing fee for this proceeding.

Issues(s) to be Decided

1. Do the Landlords have grounds to end the tenancy?

Background and Evidence

This tenancy started on September 1, 2009. On November 26, 2010, the Landlords served the Tenants in person with a One Month Notice to End Tenancy for Cause dated November 26, 2010. The grounds alleged on the Notice were as follows:

- The tenant has allowed an unreasonable number of occupants in the unit; and
- The tenant has assigned or sublet the rental unit without the Landlord's consent.

The Parties entered into the RTB form of tenancy agreement which named K.S. and P.G. as Tenants. The tenancy agreement did not contain a term restricting the number of occupants that could reside in the rental unit however at the beginning of the tenancy the Landlords advised the Tenants that their boyfriends were not permitted to reside permanently in the rental unit.

The Landlords said they believe the Tenants have had another person named "Dora" residing with them because they have seen her vehicle on the rental property and the Tenants' answering machine on one occasion said she was residing there. The Tenant (K.S.) denied that this person resided in the rental unit and claimed that she was a nanny who stayed there temporarily to care for her children when she was out of town working. K.S. claimed that Dora normally resides with her parents in another community and that she forgot to remove her from the answering machine.

The Landlords also said that K.S.'s boyfriend appears to be at the rental unit regularly although they admitted that they were not aware of his "tenancy arrangements" and had not discussed it with the Tenants. K.S. denied that her boyfriend resided in the rental unit and claimed that he had his own residence. K.S. claimed that her boyfriend's

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vehicle was often at the rental unit because she frequently switched vehicles with him and he left it at the rental unit (along with her vehicle) when away on business trips.

The Landlords said they object to the Tenants having additional occupants because the rental property was newly renovated and they did not want it to sustain additional wear and tear. The Landlords said the property is a 2 storey building with 3 bedrooms, an office (which is used as another bedroom), 3 bathrooms, a kitchen, a living room and a recreation room.

Analysis

RTB Policy Guideline #19 – Assignment and Sublet defines subletting as follows:

“a sublease is given by a tenant to a third person...[and] can convey **substantially the same interest** [emphasis added] in the land as is held by the original lessee..”

Furthermore, RTB Policy Guideline #13 – Rights and Responsibilities of Co-tenants differentiates between a Tenant and an occupant as follows:

“A tenant is the person who has signed a tenancy agreement to rent residential premises.... Where a tenant allows a person who is not a tenant to move into the premises and share the rent, the new occupant has no rights or obligations under the tenancy agreement, unless all parties agree to enter into a tenancy agreement to include the new occupant as a tenant.”

Taken together, these guidelines state that a sub-lease or assignment usually occurs where a Tenant does not occupy the rental unit and gives another party the right to exclusively occupy the rental unit (as well as other rights under the tenancy agreement). Consequently, when a Tenant allows another person, *who is not a party to the tenancy agreement* to live in the rental unit with them, the new person becomes an occupant rather than a sub-tenant. As a result, I find that there is no evidence that the Tenants have sublet or assigned the rental unit.

The Tenants argued that they have not allowed any other occupants to reside permanently in the rental unit which the Landlords deny. The Landlords sought to have witnesses attend the hearing to give evidence on this point, however they were not available at the time of the hearing. I find that this evidence would not have been helpful in any event because in the absence of a term of the tenancy agreement prohibiting additional occupants, I find that the Landlords would not be entitled to end the tenancy for this reason alone. The Landlords would only be able to end the tenancy upon showing that the number of persons residing in the rental unit was unreasonable.

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The Landlords said that they were concerned that if more occupants (than just the Tenants and their 2 children) resided in the rental unit, it would cause more wear and tear on the rental property. However, I find that there is no evidence to support that assertion and given the size and amenities of the rental unit, I find it to be unlikely if just one other occupant resided there. In summary, I find that there is insufficient evidence that the Tenants have allowed another occupant to reside in the rental unit. I also find that there is insufficient evidence to conclude that one additional occupant would be unreasonable in the circumstances.

Consequently, I find that there is insufficient evidence to support the grounds alleged on the One Month Notice to End Tenancy for Cause dated November 26, 2010 and it is cancelled. As the Tenants have been successful on their application, they are entitled pursuant to s. 72 of the Act to recover from the Landlords the \$50.00 filing fee for this proceeding and I order that they may deduct that amount from their next rent payment when it is due and payable.

Conclusion

The Tenants' application is granted. The One Month Notice to End Tenancy for Cause dated November 26, 2010 is cancelled and the tenancy will continue. 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: December 16, 2010.

Dispute Resolution Officer