



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Pope Estates Inc.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC

Introduction

This hearing was convened in response to an application filed by the tenant seeking to cancel a Notice to End Tenancy given for cause.

Both parties appeared at the hearing and gave evidence under oath.

Issue(s) to be Decided

Has the landlord met the burden of proving cause to end this tenancy?

Background and Evidence

Neither party submitted an actual form of Notice to End Tenancy. The landlord says notice was given to the tenant by way of a letter issued and delivered to the tenant on May 9, 2013 ending the tenancy at noon May 16, 2013. The landlord submitted that it is not necessary for him to issue and serve a Notice to End Tenancy as prescribed by the *Residential Tenancy Act* because this is not a residential tenancy but a licence to occupy. The landlord testified that he has a legal opinion on this matter.

The landlord maintains that even if this were a tenancy it would not come under the *Residential Tenancy Act* in any event because this is a rooming house in which the tenant shares a bathroom with the owner of the rental unit GE; although the landlord acknowledges that GE passed away in March 2010.

In addition, the landlord submits that neither he nor the corporate entity named in the tenant's applications are the proper parties to be named as landlords. The landlord says the real landlord is the Estate of GE of which the landlord named in this application and the company he owns are Executor and Trustee.

The landlord submits that this licence to occupy began on December 9, 2009. The landlord says the tenant does not pay rent but he pays a licence fee which allows him to occupy the rental unit. That fee is \$495.00 per month payable in advance on the first of each month. At the start of the licence to occupy the tenant paid a security deposit of \$275.00.

The landlord says there has been a long history of infractions dating back to January 5, 2010 which are detailed in the letters supplied in evidence and which have been delivered to the tenant. There are issues such as noise, bringing plastic bags into the rental unit, poor housekeeping, bringing in unauthorized bed linens and an unauthorized mattress and box spring which the landlord was required to remove, drinking on the porch, late payments of the licence fees (which are all now fully paid up) and issues with respect to guests and cockroaches. The landlord submitted that the tenant had been warned numerous times and a final letter was issued May 9, 2013 giving notice to the tenant that his licence to occupy was being terminated effective May 16, 2013 at noon.

The tenant disputes the notice. The tenant says this is an illegal eviction and that none of the allegations contained in the letters are true. The tenant says he is being blamed for noise he does not make and for sharing his room which he says he is not doing. The tenant says he does not bring people onto the premises. With respect to the allegations that he is keeping grocery bags in his unit he says that these are plastic shopping bags he receives when he shops at Safeway. He brings these bags home and uses them for his own garbage which he empties daily.

Analysis

The landlord's argues that this is a licence to occupy and therefore not under within the jurisdiction of the *Residential Tenancy Act*. However, the definition of "tenancy agreement" in the *Residential Tenancy Act* includes a license to occupy:

"tenancy agreement" means an agreement, whether written or oral, express or implied, between a landlord and a tenant respecting possession of a rental unit, use of common areas and services and facilities, and includes a licence to occupy a rental unit

As such, if the landlord believes he has grounds to end this tenancy as allowed under the Act then he must give Notice as prescribed under the Act. As no such notice has been served there is no notice to dispute.

With respect to the landlord's additional argument that the tenant shares a bathroom with the owner of the rental unit and the *Residential Tenancy Act*, Section 4 states that it does not apply to:

(c) living accommodation in which the tenant shares bathroom or kitchen facilities with the owner of that accommodation

The evidence shows that while it may have been true that the tenant shared a bathroom and/or kitchen facilities with the owner of this rental accommodation, although it remains unclear whether the owner ever actually resided in the rental unit at all, it is clear that she no longer resides in the rental unit because she died in March 2010. Therefore, in this regard as well, I find this tenancy comes under the jurisdiction of the Act.

Finally, with respect to the landlord's third argument that the tenant has named improper parties as landlord in this application, the "License to Use or Occupy" document submitted in evidence, which I will refer to as the Tenancy Agreement, entered into by the parties on December 9, 2009 shows that the agreement was entered into between the corporate landlord named in this application and the tenant. I therefore find that the proper parties have been named as landlords in this application.

Conclusion

The tenant's application seeking to dispute a Notice to End Tenancy for Cause is dismissed as no such Notice has been issued or served. The effect of this decision is that this tenancy shall continue under the jurisdiction of the *Residential Tenancy Act*.

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: June 10, 2013

Residential Tenancy Branch

