



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Hom[tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC

Introduction

This is an application brought by the tenant(s) requesting an order canceling a Notice to End Tenancy that was given for cause.

A substantial amount of documentary evidence and written arguments has been submitted by the parties prior to the hearing. I have thoroughly reviewed all relevant submissions.

I also gave the parties the opportunity to give their evidence orally and the parties were given the opportunity to ask questions of the other parties.

The parties were affirmed.

Issue(s) to be Decided

The issue is whether or not to cancel or uphold a Notice to End Tenancy that was given for cause.

Background and Evidence

On May 18, 2016 the landlord posted a Notice to End Tenancy on the tenant's door giving the following reasons for ending the tenancy:

- Tenant has allowed an unreasonable number of occupants in the unit/site.
- Tenant or person permitted on the property by the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord.

The landlord testified that there is a clause in their tenancy agreement that states:

There will be no additional long-term guests or occupants permitted, without the written consent of Homelife (as agent for the landlord). A long-term guest is considered to be anyone staying more than fifteen (15) days within any sixty (60) day period, or as described in any governing by law.

Landlord further testified that the tenant has moved her adult son into the rental unit and he has been living there for far more than 15 days, and therefore they consider that an unreasonable number of occupants in the rental unit.

The landlord further testified that they have had numerous noise complaints from other tenants in the rental property and from other people on adjoining properties and although the tenants of been given numerous warnings they continue to play music very loudly until all hours of the night.

The landlord further testified that they have supplied numerous complaint letters however they have removed the names from the letters as the parties fear retribution from the tenants.

The landlords therefore requested an Order of Possession for the end of June 2016.

The tenant testified that they have not been unreasonably disturbing other occupants of the rental property, all the complaints are coming from the tenants who live above them

and the complaints result from a personal matter between themselves the tenants above them.

The tenant further testified that he is unaware of any complaints from anyone else in the rental property or from any of the neighbors.

The tenant further testified that there is not an unreasonable number of occupants in the rental unit because there were 3 people on the tenancy agreement when the unit was rented and one of those parties moved out, and therefore there are still only three people in the rental unit, even though the tenants son moved in approximately 3 and half weeks ago. The tenant further testified that the son is only there temporarily and will be moving out once he finds a place of his own or moves back to his father's.

The tenants are therefore requesting that the Notice to End Tenancy be canceled.

Analysis

It is my finding that the landlord has not met the burden of proving the reasons given for ending this tenancy.

The landlord claims that they have had numerous complaints about noise from this rental unit, however all the witness letters provided have had the names removed and therefore those witness letters carry little weight, as there is no way of verifying the information in the letters.

In the absence of any signed witness letters it is basically just the landlord's word against that of the tenant, and that is not sufficient to meet the burden of proof. The burden of proving a claim lies with the applicant and when it is just the applicant's word against that of the respondent that burden of proof is not met.

Secondly, although the tenants may have breached the tenancy agreement, the landlord has not met the burden of proving that there is an unreasonable number of occupants in the rental unit. The tenants have testified that there were three occupants in the rental unit at the beginning of the tenancy, and there are three occupants in the rental unit now, and therefore I fail to see how the landlord can claim that that is an unreasonable number of occupants.

Had the landlord wanted to end the tenancy for breach of a material term of the tenancy agreement the landlord would first have to send the tenants a letter requesting they rectify that breach, and then, if the breach was not rectified within a reasonable time, the landlord could serve the Notice to End Tenancy, however in this case the landlord did not serve a Notice to End Tenancy for breach of a material term of the tenancy agreement.

Conclusion

The one-month Notice to End Tenancy dated May 18, 2016 is hereby canceled and this tenancy continues.

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 27, 2016

Residential Tenancy Branch