



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC and FF

Introduction

This hearing was convened on an application made by the tenant seeking to have set aside a one-month Notice to End Tenancy for cause dated June 10, 2013 and setting an end of tenancy date of August 1, 2013. The tenant also sought to recover the filing fee for this proceeding.

Issue(s) to be Decided

Should the Notice to End Tenancy be set aside or upheld?

Background and Evidence

This tenancy began on May 1, 2012 under a one year fixed term agreement which defaulted to a month to month tenancy at its expiry on May 1, 2013. Rent is \$1,050 per month and the landlord holds a security deposit of \$500 paid at the beginning of the tenancy.

During the hearing, the landlord gave evidence that she had served the notice to end the tenancy citing assignment or sublet of the rental unit after she had learned that there was one full time occupant of the rental unit of whom she had not been aware and a periodic guest.

The tenant gave evidence that the landlord had been aware of the third occupant substantially sooner than the Christmas period during which she said she had first encountered him while attending the rental unit for repairs.

The tenant further suggested that the Notice to End Tenancy was retaliatory as the tenant had file for ongoing dispute resolution on matters unrelated to the present dispute.

The parties had unsuccessfully attempted to resolve matters by agreeing on an amount and commencement date of a compensatory rent increase. They fell short in a similar effort to come to agreement during the hearing.

Analysis

Section 47(1)(i) of the *Act* provides that a landlord may serve a one-month Notice to End Tenancy in circumstances in which, “the tenant purports to assign the tenancy agreement or sublet the rental unit without first obtaining the landlord's written consent...”

In the present matter, the tenants who were signatories to the rental agreement remain in the rental unit and have not departed and left it in the care of another person as would be the case with an assignment or sublet.

Therefore, I find that the Notice to End Tenancy must be set aside because of the inaccuracy of the stated cause for ending the tenancy.

I decline to award the filing fee as I find the tenant(s) contributed to this dispute by housing an occupant not disclosed on the rental agreement.

Conclusion

The Notice to End Tenancy dated June 10, 2013 is set aside as the cited cause, assignment or sublet without consent, has not been proven.

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: July 22, 2013

Residential Tenancy Branch