



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Plan A Real Estate Services Ltd.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPC, MT, CNC, FF

Introduction

This hearing was convened in response to an application by the Tenant and an application by the Landlord pursuant to the *Residential Tenancy Act* (the "Act").

The Tenant applied for:

1. More time to apply to cancel the notice to end tenancy – Section 66;
2. An Order cancelling a Notice to End Tenancy – Section 47; and
3. An Order to recover the filing fee for this application - Section 72.

The Landlord applied for:

1. An Order of Possession - Section 55; and
2. An Order to recover the filing fee for this application - Section 72.

The Tenant and Landlord were each given full opportunity to be heard, to present evidence and to make submissions under oath.

Issue(s) to be Decided

Is the notice to end tenancy valid?

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

Is the Landlord entitled to an order of possession?

Are the Parties entitled to recovery of their respective filing fees?

Background and Evidence

The tenancy started on March 15, 2013. The Landlord purchased the unit in August 2014. On August 14, 2014 the Landlord posted a notice to end tenancy for cause on the tenant's unit.

The reason for the Notice was that the tenant sublet the unit without permission of the landlord.

The Landlord states that this Notice was served as they believed that there was a possibility that the Tenant had sublet the unit without written permission of the Landlord. The Landlord provided conflicting evidence about whether they were aware of the Tenant living in the unit at the time. One Landlord stated they were aware that Tenant was not in the unit and the other Landlord interrupted to state that they were not 100% sure that the Tenant was not living in the unit. The Tenant states that he did have permission to sublet the unit and relayed this information to the Landlord. The Tenant states that he also told the Landlord that the sublet was ending before the end of August 2014 and that the Tenant was moving back into the unit. The Tenant states that the Landlord did not respond and the Tenant believed that the matter was resolved. The Landlord states that they had no written documentation that the previous landlord approved a sublet and informed the Tenant that the matter was not resolved.

On September 3, 2014 the Tenant found another notice to end tenancy on the door of the unit for the same reason. This notice was signed by different person than the first notice to end tenancy but was otherwise the same as the previous notice to end tenancy. The Tenant then disputed this notice. At this time the Tenant was back in the unit and no sublet existed. The Landlord states that this second notice was only a copy of the first notice and that they attached this notice to a letter in relation to the move-out of the Tenant. The Landlord also states that they want to end the tenancy as they are concerned that the Tenant may try to sublet again without permission and that the Tenant charged a higher rent for the sublet than what was provided under the tenancy agreement. The Tenant states that the rent for the sublet was higher as the Tenant provided the unit furnished and included all the utilities and that permission to sublet had been obtained.

Analysis

Where a Notice to End Tenancy comes under dispute, the landlord has the burden to prove, on a balance of probabilities, that the tenancy should end for the reason or reasons indicated on the Notice and that at least one reason must constitute sufficient cause for the Notice to be valid.

Accepting the Tenant's evidence that the Landlord was informed that the sublet was ending shortly after the first notice was received and considering that the Landlord posted another differently signed notice to the Tenant, I find that the first notice to end tenancy was replaced by

the second notice and that this vacated or cancelled the first notice. As such I find that the Tenant disputed the second notice within the time required.

As there was no sublet at the time the second notice was issued, I find that this notice to end tenancy is not valid and that the Tenant is entitled to a cancellation of the notice. Even if the second notice was only a copy of the first notice and attached for information purposes only, I accept the Tenant's evidence that permission for the sublet was approved. As the notice has been cancelled I dismiss the Landlord's application. As the Tenant's application has been successful I find that the Tenant is entitled to recovery of the \$50.00 filing fee. I order the Tenant to reduce future rent payable by this amount in full satisfaction of the claim.

Conclusion

The Notice is cancelled. The Landlord's application is dismissed.

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: October 27, 2014

Residential Tenancy Branch

