



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, RR, FF

Introduction

This hearing was scheduled to deal with a tenant's application to cancel a 1 Month Notice to End Tenancy for Cause; and, authorization to assign or sublet because the landlord has unreasonably withheld permission.

Both parties appeared or were represented at the hearing and were provided the opportunity to make relevant submissions, in writing and orally pursuant to the Rules of Procedure, and to respond to the submissions of the other party.

Issue(s) to be Decided

1. Has the landlord established that the tenancy should be ended for the reasons indicated on the 1 Month Notice to End Tenancy for Cause?
2. Has the tenant established that the landlord has unreasonably withheld consent to assign or sublet?

Background and Evidence

The tenant owned the residential property for approximately 20 years before the landlord purchased the property effective April 1, 2014. The residential property consists of a house that has an upper rental unit and a separate basement suite. The tenant occupies the upper unit with her adult daughter. The basement suite is occupied by other tenants.

The landlord and the tenant entered into a tenancy agreement starting April 1, 2014. That tenancy agreement was replaced with a subsequent tenancy agreement that was executed on July 14, 2014 (herein referred to as "the tenancy agreement"). Pursuant to the tenancy agreement the tenant is required to pay rent of \$1,250.00 on the 1st day of every month, and rent includes water and electricity.

On November 1, 2014 the landlord issued a 1 Month Notice to End Tenancy for Cause ("the Notice") indicating the following reasons for ending the tenancy:

- Tenant or a person permitted on the property by the tenant has:
 - significantly interfered with or unreasonably disturbed another occupant or the landlord
 - seriously jeopardized the health or safety or lawful right of another occupant or the landlord
- Tenant has engaged in illegal activity that has, or is likely to:
 - adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant or the landlord
- Tenant has assigned or sublet the rental unit/site without landlord's written consent

Landlord's position

The landlord provided the following submissions with respect to the reasons for ending the tenancy, as indicated on the 1 Month Notice:

1. The tenant's adult daughter and adult son, who were residing with the tenant in the rental unit, were regularly fighting with each other to the point where the police were called and the basement suite tenants lodged several complaints with the landlord. The tenant's son moved out in August 2014; however, he returned to visit for a couple of weeks in October 2014. The landlord alleged that four basement suite tenants have moved out because of the constant fighting and noise.
2. The tenant's adult children accessed the basement suite using a key still in their possession until the landlord changed the locks in August 2014.
3. Although the tenant's son has moved out, the tenant and her daughter verbally argue with each other, as witness by the landlord's property manager. The property manager described a situation where the tenant and her daughter were arguing over an electricity bill and about when the landlord would be paying the tenant for it.
4. The tenant's daughter has accessed the hallway outside of the basement suite door although there is no reason for her to be in that hallway.
5. The landlord is of the position that the tenant is the only person who should be living in the rental unit as there is only one tenant named on the tenancy

agreement. The landlord was of the belief the tenant's daughter would be living with the tenant only temporarily; however, the tenant's daughter continues to reside in the rental unit.

6. For the month of November 2014 and December 2014 the landlord received two cheques for the monthly rent: \$775.00 for the tenant and \$475.00 received from Income Assistance on behalf of the tenant's daughter. The landlord cashed the cheques but was of the position that the tenant's daughter must have committed a fraud since the landlord had not signed any documentation indicating that the tenant's daughter was a tenant.

The landlord claimed that she gave the tenant a warning letter about the frequent disturbances of other tenants but the landlord did not produce a copy of the letter and the landlord testified that she was uncertain as to when she gave the letter to the tenant. The landlord also claimed that she spoke with the tenant and the tenant's daughter about the disturbances on two occasions and during those conversations the tenant assured the landlord that her daughter would be moving out.

The landlord suspects the tenant's children are drug users and have an abusive relationship with the tenant.

As documentary evidence, the landlord I was provided a copy of the tenancy agreement executed July 14, 2014 including the addendum; the subject 1 Month Notice; and, a copy of a cheque from Income Assistance indicating it was for rent for the tenant's daughter for the month of November 2014.

Tenant's position

In filing her Application for Dispute Resolution the tenant indicated she has not sublet the rental unit as she has continuously residing in the rental unit and that he son has since moved out. The tenant also submitted on her Application that she did not unreasonably disturb another occupant or jeopardize the health and safety of another person.

Responses by tenant's representative

The tenant's representative from the Public Guardian and Trustee office explained that the Public Guardian and Trustee took over the tenant's financial affairs at the end of November 2014. The representative also stated that she has been in communication with the tenant's social worker. The representative provided the following responses to the landlord's submissions:

1. The representative was unaware of fighting between the tenant's adult children that allegedly took place in the spring and summer months since the Public Guardian and Trustee became involved in November 2014; however, the tenant's son moved out of the rental unit in August 2014 and the locks were changed to the door leading to the basement suite in August 2014 which would resolve the first two issues raised by the landlord. The representative was unaware of a visit from the tenant's son in October 2014.
2. The tenant's representative understands from the social worker that the tenant and her daughter natter at each other but that it is a caring relationship and that the tenant is dependent on others for care. It was suggested that the tenant and/or her daughter may be having a difficult time transitioning from having ownership of the property and living alongside basement suite tenants chosen by the landlord. The representative stated that she will communicate to the tenant that her tenancy may be jeopardized by the behaviour of her daughter, or other persons permitted on the property by the tenant, that negatively impacts other people residing on the property or the landlord.
3. The representative questioned the reason the hallway outside of the basement suite is accessible if the only persons that should be using it are the basement suite tenants or their guests. The property manager explained that the basement suite tenant leaves the door unlocked so that her guests may come to her basement suite entry door. The property manager indicated that she was prepared to designate the hallway as being for the exclusive use of the basement suite tenant and informing the tenants of such in writing.
4. The representative submitted that the tenant's daughter has been residing with the tenant since before the tenancy commenced and throughout the tenancy as the daughter is the tenant's care-giver. The tenancy agreement was reviewed and noted that there are no terms precluding the tenant from having an additional occupant.
5. With respect to the two rent cheques the landlord received for November and December 2014, the representative pointed out that no evidence of fraud has been provided by the landlord and suggested that more than one scenario could explain the issuance of two separate rent cheques

Analysis

Upon consideration of everything before me, I provide the following findings and reasons.

Where a Notice to End Tenancy comes under dispute, the landlord has the burden to prove that the tenancy should end for the reason(s) indicated on the Notice. The burden of proof is based on the balance of probabilities. Accordingly, where one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof has not met their burden of proof.

Under the Act, a landlord may end a tenancy where the tenant has assigned or sublet the rental unit without the landlord's written consent. The landlord was of the position the tenant has sublet the rental unit since she has another person residing with her who is not a named tenant on the tenancy agreement. A sublet is where a tenant conveys substantially the same interest in the land as is held by the tenant. Thus, a sublet occurs where the tenant moves out of a rental unit and re-lets the property to another person. In this case, the tenant has not moved out of the rental unit and I find the landlord has not demonstrated that a sublet has occurred. Therefore, I do not end the tenancy on the basis the tenant has sublet the rental unit.

As the tenant's daughter is not a named tenant on the tenancy agreement but resides with the tenant, I consider her to be an "occupant". The tenancy agreement provided as evidence does not preclude the tenant from having an occupant reside with her.

An "occupant" has no rights or obligations under the Act or the tenancy agreement. That being said, the tenant has the obligation to pay all of the rent owed to the landlord, regardless of whether an occupant has paid the tenant for a share of living expenses, and the tenant may face eviction under section 47(1)(d) of the Act if the occupant has:

- significantly interfered with or unreasonably disturbed another occupant or the landlord;
- seriously jeopardized the health or safety or lawful right of another occupant or the landlord; or
- puts the landlord's property at significant risk.

In this case, I heard from the landlord that the behaviour of the tenant's adult children has been disturbing to other tenants residing at the residential property. The landlord pointed to regular fighting between the tenant's daughter and son largely in support of

this position and unlawful entry into the basement suite; however, I heard the tenant's son moved out in August 2014 and the locks to the basement suite were changed in August 2014. I find it reasonable to expect that if the behaviour of the tenant's daughter and son was so disturbing or significant, that a 1 Month Notice would have been issued well before it was on November 1, 2014. Also of consideration is that the landlord did not call the basement suite tenants to testify or have them provide affidavits to describe what they experienced. Nor, did the landlord provide a copy of the warning letter allegedly given to the tenant. Finally, I heard about one argument between the tenant and her daughter that took place in front of the property manager concerning an electricity bill; however, I did not hear that their arguments were unreasonably disturbing to other occupants of the residential property. Therefore, I find the landlord failed to provide sufficient evidence to demonstrate that the tenant, or her children, have significantly interfered with or unreasonably disturbed other occupants; or, seriously jeopardized other occupants' health, safety or lawful rights.

Despite the foregoing, **the tenant is cautioned that her tenancy may be ended should her daughter, or any other person she permits on the property, unreasonably disturb or significantly interfere with other occupants of the property in the future.**

With respect to illegal activity, I find the landlord did not provide sufficient evidence to indicate the tenant has engaged in illegal activity that has, or is likely to adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant or the landlord. While I accept that fraud is an illegal activity, the receipt of a rent cheque form Income Assistance on behalf of the tenant's daughter is in itself insufficient to satisfy me that a fraud was perpetrated by the tenant. Therefore, I do not end the tenancy on the basis the tenant has engaged in illegal activity.

Considering all of the above, I find the landlord failed to demonstrate that the tenancy should end for the reasons indicated on the 1 Month Notice issued on November 1, 2014. Therefore, I grant the tenant's request to cancel the 1 Month Notice with the effect that this tenancy continues at this time.

I dismiss the tenant's request for authorization to assign or sublet the tenancy as the tenant failed to put forth any evidence to such a request to assign or sublet had been provided to the landlord in writing.

I award recovery of the filing fee to the tenant as I have cancelled the 1 Month Notice. The tenant is authorized to deduct \$50.00 from a subsequent month's rent in satisfaction of the award.

Conclusion

The 1 Month Notice dated November 1, 2014 has been cancelled with the effect that this tenancy continues at this time.

The tenant has been cautioned by way of this decision that the behaviour of persons she permits on the residential property may jeopardize her tenancy in the future.

The tenant's request to assign or sublet the tenancy has been dismissed.

The tenant has been awarded recovery of the filing fee paid for this Application which she may recover by deducting \$50.00 from a subsequent month's rent.

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 11, 2014

Residential Tenancy Branch

