



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, CNL, OPL, OPC, 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 on June 6, 2016 for:

1. An Order cancelling two notices to end tenancy - Section 47 and 49.

The Landlord applied on June 13, 2016 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 under oath to be heard, to present evidence and to make submissions.

Issue(s) to be Decided

Is either of the notices to end tenancy valid?

Is the Landlord entitled to an order of possession?

Background and Evidence

The tenancy started on May 5, 2013. Rent of \$1,600.00 is payable on the first day of each month. Although there is a written tenancy agreement this was not provided by either Party as evidence.

On May 31, 2016 the Landlord served the Tenant with a one month notice to end tenancy for cause (the "First Notice") by posting the First Notice on the door. The Landlord states that the tenancy agreement provides only for 5 occupants and that all utilities are included in the rent. The Landlord states that the Tenant has been subletting a portion of the unit to another person not listed on the tenancy agreement as an occupant. The Landlord argues that this is either a sublet or an assignment of the unit and that no permission was given to the Tenant for this. The effective date of the First Notice is set out as June 30, 2016.

The Tenant states that one of the Tenants on the tenancy agreement moved out of the unit so the Tenant obtained another person to share the unit and the rent. The Tenant states that this person shares the whole unit.

On May 31, 2016 the Landlord served the Tenant with a 2 month notice to end tenancy for landlord's use (the "Second Notice") by posting the Second Notice on the door of the unit. The effective date of the Second Notice is set out as July 31, 2016. The reason indicated on the Second Notice is that a family member will be occupying the unit. The Landlord states that his son will be moving into the unit to help the family with the house and to help with the parents. The Landlord states that the son is currently living in a rental unit and has purchased a property with a house that is being torn down to be rebuilt. The Landlord states that the intention of the son, who is neither married nor has children, is to live in the unit for an indefinite period of time.

The Tenant states that she has no evidence to refute that the son will move into the unit.

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. An assignment of a rental unit occurs when a tenant obtains another person to take over the entire tenancy and the original tenant moves

out permanently. A sublet is where a tenant obtains a person to take over the rental unit only for a period of time following which the original tenant returns to the unit. As the Tenants have not moved out of the unit I find that the Landlord has not substantiated that any sublet or assignment has occurred. I find therefore that the First Notice is not valid and is cancelled.

Given the undisputed evidence of the Landlord that the son will be occupying the rental unit, I find that the Second Notice is valid and that the Tenant must therefore move out of the unit.

Section 90 of the Act provides that if a document is served by posting the document to the door the document is deemed to be received on the 3rd day after it is posted. As the Landlord posted the Second Notice on the door on May 31, 2016 I find that it is deemed to have been received by the Tenant on June 3, 2016.

Section 49(2) of the Act provides that a landlord may end a tenancy for landlord's use by giving notice to end the tenancy effective on a date that must be, inter alia,

- (a) not earlier than 2 months after the date the tenant receives the notice,
- (b) the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.

Section 53 of the Act provides that if a landlord gives notice for an incorrect effective date the notice is deemed to be automatically corrected to the correct date. As the Tenant only received the Second Notice on June 3, 2016 and as rent is payable on the first day of the month I find that the effective date of the Second Notice is automatically corrected to August 31, 2016. I therefore provide the Landlord with an order of possession effective 1:00 p.m. on August 31, 2016.

Section 55(1) provides that if a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, an order of possession must be granted to the landlord if, the notice to end tenancy complies in form and content and the tenant's

application is dismissed or the landlord's notice is upheld. As the Tenant had made an application to dispute both Notices and as the Act provides the Landlord with an order of possession in these circumstances it was not necessary for the Landlord to make an application to seek an order of possession. As a result I decline to award recovery of the filing fee to the Landlord.

Conclusion

The Tenant's application is dismissed.

I grant an Order of Possession to the Landlord effective 1:00 p.m. on August 31, 2016.

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 07, 2016

Residential Tenancy Branch