



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding WRM STRATA MANAGEMENT
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC, AS

Introduction

This hearing dealt with an Application for Dispute Resolution by the tenant filed under the Residential Tenancy Act (the “Act”), to cancel One Month Notice to End Tenancy for Cause, (the “Notice”) issued on August 8, 2017, and to allow a tenant to assign or sublet the premise..

Both parties appeared, gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions at the hearing.

In a case where a tenant has applied to cancel a Notice, Rule 7.18 of the Residential Tenancy Branch Rules of Procedure require the landlord to provide their evidence submission first, as the landlord has the burden of proving cause sufficient to terminate the tenancy for the reasons given on the Notice.

I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure. I refer only to the relevant facts and issues in this decision.

Procedural matter

At the conclusion of the hearing both parties requested a copy of the decision and orders be sent by email. I confirmed their email addresses and they have been noted on the covering page of this decision.

Issues to be Decide

Should the Notice be cancelled?

Should the tenant be allowed to assign or sublet the premise?

Background and Evidence

The tenancy began in October 2010.. Rent in the amount of \$3,300.00 was payable on the first of each month. The tenant paid a security deposit of \$1,500.00.

The parties agreed that the Notice was served on the tenant indicating that the tenant is required to vacate the rental unit on September 30, 2017.

The reason stated in the Notice was that the tenant has:

- Tenant has not done required repairs of damages to the unit;
- The tenant is repeatedly late paying rent;
- Tenant or person permitted on the property by the tenant has cause extraordinary damage to the unit;
- Breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so; and
- Tenant has assigned or sublet the rental unit without the written consent of landlord.

The landlord testified that the tenant made unauthorized changes to the rental unit, by altering the loft area, by installing a wall. The landlord stated that the wall was screwed or nailed into the wood floor and the vaulted wood ceiling. Filed in evidence are photographs of the wall what shows the wall is fastened to the floor and ceiling. It also show trim has be nailed or screwed into the wood floor and wood ceiling.

The landlord testified that the tenant was given a letter on July 5, 2017, that they were required to remove the wall and restore the loft back to the original condition. The landlord stated on August 4, 2017, when they attend the rental unit the wall had not been removed. The landlord stated as of today the tenant has not removed the structure. The landlord seeks an order of possession.

The tenant testified that they were given notice to remove the wall. The tenant stated they had a building inspector and fire department inspect the wall and they had no issues. The tenant stated that they have not removed the wall and the landlord was not willing to give them an extension to do so. The tenant did not provide any documentary evidence to their position.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

I have considered all of the written and oral submissions submitted at this hearing, I find that the landlord has provided sufficient evidence to show that the:

- Tenant has not done required repairs of damages to the unit.

In this case, the tenant installed a wall in the loft area. The wall has been attached to the wood floors and to the wood ceiling. The landlord gave the tenant written notice on July 5, 2017, that they wanted the structure removed and the repairs done to the loft. The tenant did not complete the required repairs by the date indicated in the letter, which was August 4, 2017. The tenant was then served with the Notice dated August 8, 2017. As of today, November 9, 2017, the structure remains.

I find the tenant was not authorized to install a wall and was given sufficient notice to remove the wall and make repairs to the loft area. I find the tenant did not make the required repairs as directed. I find the tenant breach the Act. I find the Notice has been proven by the landlord and is valid and enforceable. Therefore, I dismiss the tenant's application to the Notice issued on August 8, 2017. I find the tenancy legally ended on September 30, 2017, and the tenant is now overholding the rental unit.

As I have found the Notice valid for the reason stated above, I find it not necessary to consider the remainder reasons stated in the Notice. Further, as the tenancy has ended, I find it not necessary to consider the tenant's request to be allowed to assign or sublet the premises.

The tenant paid November 2017, rent by cheque on this day, November 9, 2017. The landlord has not had an opportunity to determine if the cheque is cashable and there is a history of the tenant providing cheques that were returned for insufficient funds. Therefore, I find it appropriate to make the following orders.

Should the cheque issued by the tenant for November 2017, rent be cashable, I find it appropriate to extend the effective vacancy date in the Notice to November 30, 2017, pursuant to section 66 of the Act. I find that the landlord is entitled to an order of

possession effective **November 30, 2017 at 1:00 P.M.** This order must be served on the tenant and may be filed in the Supreme Court.

Should the cheque issued by the tenant for November 2017, rent not be cashable, I find the landlord is entitled to an order of possession, pursuant to section 55 of the Act, effective **two days** after service on the tenant. This order must be served on the tenant and may be filed in the Supreme Court.

Conclusion

The tenant's application to cancel the Notice, issued on August 8, 2017, is dismissed.

The landlord is granted two separate orders of possessions in order to enforce the above made orders.

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: November 09, 2017

Residential Tenancy Branch