



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC AAT AS LAT LRE FF

Introduction

This hearing was convened as a result of the Tenant's Application for Dispute Resolution. A participatory hearing, via teleconference, was held on May 9, 2018. The Tenant applied for multiple remedies, pursuant to the *Residential Tenancy Act* (the "Act").

Both parties attended the hearing and provided testimony. All parties were given a full opportunity to be heard, to present evidence and to make submissions. The Landlord confirmed receipt of the Tenant's documentary evidence and Notice of Hearing documents. The Tenant confirmed receipt of the Landlord's documentary evidence.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Preliminary and Procedural Matters

The Tenant applied for multiple remedies under the *Act*, a number of which were not sufficiently related to one another.

Section 2.3 of the Rules of Procedure states that claims made in an Application must be related to each other and that arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply.

After looking at the list of issues before me at the start of the hearing, I determined that the most pressing and related issues in this application deal with whether or not the tenancy is ending. As a result, I exercised my discretion to dismiss, with leave to

reapply, all of the grounds on the Tenant's application with the exception of the following ground:

- to cancel a 1 Month Notice to End Tenancy for Cause (the "Notice").

Issue to be Decided

- Is the Tenant entitled to have the Landlord's 1 Month Notice cancelled?
 - If not, is the Landlord entitled to an Order of Possession?

Background and Evidence

The Tenant acknowledged receiving the Notice on March 13, 2018. The Landlord issued the Notice for the following reason:

- Tenant has assigned or sublet the rental unit/site without landlord's written consent.

Under the "Details of Cause" section and in the letter the Landlord attached to the Notice, she specified that the Tenant had the right to get a "boarder/roommate" with approval, but that she was not entitled to rent the basement to two people, as a self-contained suite. The Landlord indicated that she never gave consent for the roommate/boarder, let alone for the Tenant to rent out the basement as a separate suite while she lived above.

The Landlord testified that she did renovations in the basement to add living space to the rental unit while the Tenant lived above. The Landlord testified that she added a bedroom, living room and wet bar, but never put in a proper self-contained suite. The Landlord testified that there is no separate kitchen and it cannot and should not be rented as a self-contained unit. The Landlord testified that the lease she and the Tenant had allowed for the Tenant to obtain one roommate or boarder, and only with her consent. The Landlord testified that she located the ad the Tenant listed online which shows that she was trying to rent it as a self-contained suite. She provided a copy of this into evidence.

The Landlord testified that the Tenant engaged in an illegal sublease of the rental unit and therefore she is seeking to end the tenancy for cause.

The Tenant stated that she never actually sublet the rental unit because she never actually gave up or transferred her right or access to the rental unit. The Tenant stated

that she was only looking for a roommate, and when she posted the ad as a “suite”, this was a mistake in words because she was looking to share the space inside the house with the potential roommates. The Tenant stated that English is not her first language and she listed the ad as a “suite” but she meant that it is shared accommodation in a roommate type of set up.

Analysis

In the matter before me, the Landlord has the onus to prove that the reasons in the Notice are valid.

I have reviewed the Notice issued by the Landlord and I find it meets the form and content requirements under section 52 of the Act. I note the Tenant received the Notice on March 13, 2018, and applied to dispute it on March 20, 2018. On the Notice, the Landlord is alleging that the Tenant has assigned or sublet the rental unit/site without Landlord's written consent. In my consideration of this matter, I turn to Residential Policy Guideline #19 which states:

Subletting

The use of the word ‘sublet’ can cause confusion because under the Act it refers to the situation where the original tenant moves out of the rental unit, granting exclusive occupancy to a subtenant, pursuant to a sublease agreement.

I note that the Tenant is still actively living in the house (and has been all along). The lease agreement the Tenant has with the Landlord appears to be for the entire house (not factoring in the garage storage). I note that when the Tenant posted an ad to obtain a roommate/boarder, she specified that the space for rent had a “kitchen dining area” and the ad does not indicate that the space for rent within her house had an actual kitchen or that it was fully independent of the space upstairs which the original Tenant continued to occupy. Overall, I find there is insufficient evidence that there is a separate functional kitchen in the basement living area. I am also mindful that the Landlord stated that the basement, which was recently renovated, does not have a separate functional kitchen, and just has a sink with a counter (wet bar). Based on the evidence it seems unlikely that the space downstairs is sufficiently separate as to consider its rental as a sublease, given the original Tenant remained living in the house.

I find the rental of the basement to the additional occupants is more analogous to a roommate situation (rather than a sublease), given the lack of evidence that the unit is properly self-contained and considering the Tenant never moved out of the rental unit.

Given my findings on this matter, I find the Landlord has not established that there are sufficient grounds to end the tenancy based on an illegal sublease. The Tenant's application is successful and the Notice received by the Tenant on March 13, 2018, is cancelled. I order the tenancy to continue until ended in accordance with the *Act*.

As the Tenant was successful with her application, I grant her the recovery of the filing fee against the Landlord. The Tenant may deduct the amount of \$100.00 from 1 (one) future rent payment.

I note that the tenancy agreement clearly lists that the Tenant must get permission before assigning, subleasing, or getting a roommate. I encourage both parties to comply with any material terms of the tenancy agreement, and to comply with the *Act* and the *Regulations*. Failure to adhere to the *Act* and any agreements may cause further disputes or form the basis for eviction. Furthermore, the Landlord remains at liberty to re-issue a new Notice under different grounds if she feels there are other grounds to end the tenancy.

Conclusion

The Tenant's application is successful. The Notice is cancelled.

The Tenant may deduct the amount of \$100.00 from one (1) future rent payment.

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: May 10, 2018

Residential Tenancy Branch