



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, CNR, FFT, LRE, OLC, FFT, OPC

Introduction

This hearing dealt with the cross-applications pursuant to the *Residential Tenancy Act* (the *Act*) for:

The landlord requested:

- an Order of Possession pursuant to section 55; and
- authorization to recover his filing fee for this application from the tenant pursuant to section 72.

The tenant requested:

- cancellation of the landlord's 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) pursuant to section 46;
- cancellation of the landlord's 1 Month Notice to End Tenancy for Cause (the 1 Month Notice) pursuant to section 47;
- authorization to change the locks to the rental unit pursuant to section 70;
- an order requiring the landlord to comply with the *Act*, regulation or tenancy agreement pursuant to section 62;
- an order to suspend or set conditions on the landlord's right to enter the rental unit pursuant to section 70; and
- authorization to recover his filing fee for this application from the landlord pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another. The parties acknowledged receipt of evidence submitted by the other. I have reviewed all evidence and testimony before me that met the requirements

of the rules of procedure; however, I refer to only the relevant facts and issues in this decision.

Preliminary Issues

At the outset of the hearing TB advised and confirmed that CP is her subtenant and not a tenant as part of this dispute. The landlord also confirmed that TB is the only tenant noted on the tenancy agreement. TB requested to cancel a 10 Day Notice for Unpaid Rent or Utilities dated September 20, 2018. However, neither party has submitted a copy of that notice for this hearing. BK testified that September's rent has been paid in full and that is no longer an issue and that this hearing is in regards to One Month Notice to End Tenancy for Cause, accordingly; I dismiss that portion of the tenants' application as the matter has already been dealt with.

Issues to Decide

Is the tenant entitled to have the One Month Notice to End Tenancy for Cause cancelled? If not, is the landlord entitled to an order of possession?

Is the tenant entitled to an order to have the landlord comply with Act, regulation or tenancy agreement?

Is the tenant entitled to an order limiting the landlords' right to access or enter the unit or suite?

Is either party entitled to the recovery of the filing fee from the other for their application?

Background and Evidence

The landlord gave the following testimony. The tenancy began on June 1, 2015. The current monthly rent is \$2392.00 due on the first of each month. The tenant paid a security deposit of \$1125.00 at the outset of the tenancy. The landlord testified that the tenant has signed consecutive one year fixed term agreements since June 2015. BK testified that as part of their signed RTB form tenancy agreement, he includes an addendum that prohibits subletting.

BK testified that TB did not obtain his written or verbal permission at any time to sublet the unit. BK testified that he wants to know who is living in his property and wishes to conduct checks to ensure they are suitable tenants if the tenant wants to get a new roommate. BK testified that he is unsure as to who's living in his property and that there

has already been a heated exchange with one individual. AD also confirmed a heated exchange with a male occupant. BK testified that regardless of his addendum, the Act requires the tenant to get the landlords written permission to sublet; which the tenant did not do verbally or in writing. BK issued a One Month Notice for Cause to the tenant on August 30, 2018 with an effective date of September 30, 2018 on the basis that the tenant sublet the unit without the landlords' written permission. SJ requested an order of possession.

The tenant gave the following testimony. TB testified that she does not presently live in the unit and that she has sublet it out for three months. TB testified that the landlord was aware that she would need other people to live in the suite with her to be able to afford the rent. TB testified that she is the only party on the tenancy agreement and that she pays the landlord directly. TB testified that she is CP's landlord and that they have entered into a sublet agreement for three months so that she could travel. TB testified that the addendum that the landlord is referring to was from 2017 and that it was not part of the June 2018 agreement.

Analysis

When a landlord issues a notice under section 47 of the Act, they bear the responsibility in providing sufficient evidence to support the issuance of that notice. Both parties agree that the tenancy agreement signed by both parties for the current tenancy is on the Residential Tenancy Branch form RTB-1. Clause 9 on that agreement clearly outlines that a tenant must receive the landlords written consent to sublet the unit. In addition, section 34 of the Act addresses the issue before me as follows:

Assignment and subletting

- 34** (1) Unless the landlord consents in writing, a tenant must not assign a tenancy agreement or sublet a rental unit.
- (2) If a fixed term tenancy agreement has 6 months or more remaining in the term, the landlord must not unreasonably withhold the consent required under subsection (1).
- (3) A landlord must not charge a tenant anything for considering, investigating or consenting to an assignment or sublease under this section.

I find that the landlord has not unreasonably withheld permission to allow the tenant to sublet, because the tenant has never asked, but rather took it upon herself to act as a landlord and rent out her suite so that she could travel. The tenant acknowledged and confirmed in her own testimony that she did not have the landlords' verbal or written consent to sublet the unit. Also confirmed by the tenant, was that she entered into a sublet agreement and no longer lives in the unit. Based on all of the above, I find that the tenant has sublet the unit without the landlords' written consent and that the One Month Notice to End Tenancy for Cause is confirmed. The tenancy is terminated. The landlord is granted an order of possession pursuant to section 55 of the Act.

As I have found that this tenancy is at its end, I hereby dismiss the remainder of the tenants' application.

The landlord is entitled to the recovery of the \$100.00 filing fee. The landlord is entitled to retain \$100.00 from the security deposit in full satisfaction of that claim.

Conclusion

The One Month Notice to End Tenancy for Cause dated August 30, 2018 with an effective date of September 30, 2018 is of full effect and force. The tenancy is terminated.

The tenants' application is dismissed in its entirety without leave to reapply.

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 26, 2018

Residential Tenancy Branch