



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC

Introduction

This hearing dealt with the tenant's application for dispute resolution under the Residential Tenancy Act (Act) for:

- an order cancelling a One Month Notice to End Tenancy for Cause (Notice) issued by the landlord.

The tenant and the landlord attended, the hearing process was explained, and they were given an opportunity to ask questions about the hearing process.

The landlord did not raise an issue about receiving the tenant's evidence and confirmed that she has not filed evidence.

Thereafter both parties were provided the opportunity to present their evidence orally and to refer to relevant documentary evidence submitted prior to the hearing, and make submissions to me.

I have reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch Rules of Procedure (Rules). However, not all details of the parties' respective submissions and or arguments are reproduced here; further, only the evidence specifically referenced by the parties and relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

Is the tenant entitled to an order cancelling the landlord's Notice?

Background and Evidence

The tenant said she has lived in the rental unit for 16 years, and current monthly rent is \$1,000.00.

The evidence shows that the landlord here was not the original landlord, rather the listed landlord's father was the owner/original landlord until January 1, 2020, when this landlord took ownership of the property.

The evidence shows this is the second time the landlord has attempted to end this tenancy, with the first attempt being unsuccessful in a previous dispute resolution hearing. In a Decision of March 2, 2020, another arbitrator dismissed the landlord's application. The file number for that Decision is listed on the style of cause page in this Decision.

In accordance with the Rules, the landlord proceeded first to prove the reason she wishes to end the tenancy.

The One Month Notice to End Tenancy for Cause, which is the subject of this application, was dated September 4, 2020, for an effective move out date of October 5, 2020. The landlord confirmed serving the Notice to the tenant by placing it in her mailbox on or about September 4, 2020. The tenant's application was made on September 9, 2020.

The cause listed on the Notice, submitted into evidence by the tenant, alleged that the tenant has assigned or sublet the rental unit without the landlord's written consent.

It is noted that the landlord did not submit evidence prior to the hearing to demonstrate why she believed the tenant had assigned or sublet the rental unit.

On the Notice, the landlord provided details of the causes, more specifically he wrote:

TL allowed a friend to move into a recently vacant suite in the building with no written consent or previous contact with the landlord.

Filed into evidence was a copy of the Notice.

In support of the Notice, the landlord said one of the tenant's roommates, NW, moved out and the tenant had another roommate move in, without the approval of the landlord.

The landlord said that the three bedrooms in the rental unit were rented out individually, as single room occupancies.

The landlord confirmed that monthly rent was \$1,000.00, which was paid by the two roommates and that the tenant pays the utilities. The landlord also said the tenant has offered the monthly rent for September, but she refused it.

Tenant's response –

The tenant submitted that when the tenancy first began, she lived there with her boyfriend, only. The tenant said after her boyfriend moved out early on and throughout the tenancy, she had a series of roommates move into the other two bedrooms. The tenant explained that when one bedroom became available, she advertised for another roommate, all with the knowledge and approval of the previous owner/landlord and his son, the landlord's agent at the time.

The tenant said that throughout the tenancy, her roommates each paid \$500.00, which she typically gave to the landlord's son, in cash. The tenant explained that the roommates paid half the rent as she paid the utilities for the rental unit, which could run over \$600 monthly.

The tenant submitted a written agreement, labelled "Property Rental Agreement". The tenant indicated she did not know if it was a legal rental agreement.

The document listed the landlord's father and original landlord as the landlord, and listed the tenant as Tenant 1, and three other tenants, an individual, NW, as Tenant 2, and two other people, GH and RK, as Tenants 3.

The lease period in that written agreement was started at September 1, 2019.

Directly above the tenants' signature line on the last page of the written agreement, was a term which specifically stated "JOINT TENANCY:". Included in that term was that the tenants understood and agreed that their obligations are "joint and several".

Analysis

In an application to cancel a One Month Notice, the landlord has the burden of proving on a balance of probabilities that at least one of the reasons set out in the Notice is met.

On September 4 2020, the landlord served the tenant with the One Month Notice. The One Month Notice set out that it was being given as the tenant has assigned or sublet the rental unit without the landlord's written consent. Subparagraph 47(1)(i) of the Act permits a landlord to terminate a tenancy by issuing a One Month Notice in cases where a tenant purports to assign the tenancy agreement or sublet the rental unit without first obtaining the landlord's written consent as required by section 34.

In order to prove the One Month Notice is valid, the landlord must show that the tenant did purport to assign or sublet the rental unit.

I have reviewed Residential Tenancy Policy Guideline 19, which outlines the definitions of both an assignment and a sublet.

An assignment is the act of permanently transferring a tenant's rights under a tenancy agreement to a third party, who becomes the new tenant of the original landlord.

As to subletting, this refers to when the original tenancy agreement remains in place between the original tenant and the landlord, and the original tenant and the sub-tenant enter into a new agreement (referred to as a sublease agreement). Under a sublease agreement, the original tenant transfers their rights under the tenancy agreement to a subtenant.

In the case before me, the evidence clearly shows that another roommate of the tenant moved into a spare bedroom within the rental unit to help pay the rent, as had been the custom of this tenant for the 16 years of the tenancy. I therefore do not accept the landlord's argument that the bedrooms were rented out individually and on a single room occupancy basis.

The tenant remains living at the rental unit as a tenant. I therefore find that she has not assigned or subleased her rights under a tenancy agreement to a third party.

For these reasons, I therefore find the landlord has submitted insufficient evidence that the tenant has assigned or sublet the rental unit without the landlord's written consent.

As a result of the above, the One Month Notice is **cancelled** and is of **no force or effect**.

I ORDER the tenancy to continue until ended in accordance with the *Act*.

Conclusion

The tenant's application has been granted as I have ordered that the landlord's One Month Notice to End Tenancy for Cause, dated September 4, 2020 be cancelled and that the tenancy continue until ended in accordance with the Act.

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 13, 2020

Residential Tenancy Branch