



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes CNC, FFT

Introduction

On February 10 2023, the Tenant submitted an Application for Dispute Resolution under the *Residential Tenancy Act* (“the Act”) seeking to cancel a One Month Notice to End Tenancy for Cause dated February 3, 2023, (“the One Month Notice”).

The matter was scheduled as a teleconference hearing. The Landlord’s agent and the Tenant appeared at the hearing. The hearing process was explained and the participants were asked if they had any questions. Both parties provided affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and make submissions to me.

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.

Issue to be Decided.

- Does the Landlord have sufficient cause to end the tenancy?

Background and Evidence

Both parties testified that the tenancy began on October 11, 2016, on a month-to-month basis. The current Landlord took possession of the residential property in November 2022.

The Landlord served the One Month Notice to the Tenant in person on February 3, 2023. The Notice has an effective date (the date the Tenant must move out) of March 3, 2023.

The Landlord selected the following reasons for ending the tenancy within the One Month Notice:

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

The One Month Notice provides information for Tenants who receive the Notice. The Notice states that a Tenant has the right to dispute the Notice within 10 days after receiving it by filing an Application for Dispute Resolution at the Residential Tenancy Branch. If a Tenant does not file an application within 10 days, the Tenant is presumed to accept the Notice and must move out of the rental unit or vacate the site by the effective date set out on page 1 of the Notice.

The Tenant disputed the One Month Notice on February 10, 2023 within the required time period.

The Landlord testified that some tenants have low rent and are illegally subletting their units and pocketing the difference in rent. The Landlord is cracking down on this practice and sent residents a notice in November 2022 asking residents to come forward and identify anyone living in the rental units who are not listed on the tenancy agreement. The Landlord stated that they did not receive a response from the Tenant.

The Landlord stated that they have evidence the Tenant has sublet her unit and is not living in her unit. The Landlord stated that the caretaker has not seen the Tenant. He stated that the Tenant is living in Mexico.

The Landlord stated that a long time ago, the Tenant was permitted to sublet the unit for a short period of time. The Tenant again requested permission to sublet and was denied.

The Landlord provided a document dated April 7, 2023, from a landlord of the property that states have witnessed a man entering and exiting the unit on several occasions for a period of several months.

The Landlord provided another document dated April 7, 2023 from a landlord of the property which provides they had not seen the Tenant in the building for at least 6 months, if not more. In late August or September, a man had been entering and staying in unit #325 who was not the Tenant. Around this time, the Tenant inquired with the previous manager if she could sublease, and the manager said no. The same man had been living in the unit for approximately 6 months, until February 2 2023, when the Tenant was served her notice of eviction. In the month of December or January, the man knocked on the Landlord's door to pay the rent by cheque (in his name) for the rental unit. The Landlord knocked on unit #325 to serve the eviction notice in person, and there was someone inside the unit but they refused to open the door. We knocked several times then slipped the notice through the mailbox. The Tenant reached out later than day via text message to say that her brother was in the unit and just using it "during the day" for work, and that she was not subletting.

The Landlord provided a letter dated April 1, 2023 from the previous manager of the property. The letter provides that the Tenant asked to sublet the unit once again in October 2022 and the Landlord rejected her request.

In response to the Landlord's testimony, the Tenant testified that she took no action in regards to the Landlord's notice that the building was sold and about unauthorized occupants because she was living alone. The Tenant testified that she has lived alone in the rental unit for the past 3 years.

In 2021 The Tenant went to Mexico for three months and was permitted to sublet until May 2022 when her sub tenants moved out. On June 28th she returned home and her parents came to visit and stayed with her from June 28- July 24, 2022.

The Tenant provided a copy of an email sent to the Landlord S.C. requesting a copy of the sublease agreements that were signed for approved sublets in November 2021 and March 2022. The Tenant provided a copy of text messages between her and the Landlord in September 2021 where the Landlord approved her to sublet.

The Tenant stated that her brother came back with her from Mexico and she permitted him to stay with her while he was looking for a rental unit. She testified that she advised the Landlord that her brother was staying with her and was told it was ok. She stated that her brother left on August 1, 2022.

The Tenant provided a letter dated February 9, 2023, from a property owner that provides that Mr. P.R. has resided at a different address from August 1, 2022 to January 31, 2023.

The Tenant pointed out that in June 2022 the Landlord was renovating the balcony and workers had to enter the unit. She stated that the unit was vacant, and nobody was living in the unit.

The Tenant stated that her boyfriend came to stay with her from August 12 until August 28, 2022.

The Tenant stated that on September 19, 2022, the other tenant named on the tenancy agreement Mr. R.L. came to stay with her until he could find a place of his own. He left her unit on October 16, 2022.

On October 16, 2022, the Tenant returned to Mexico. She asked her brother to look after her apartment and deal with mail, bills, and her car. She stated that in November 2022 she received notice from the Landlord that rent was not to be paid electronically, so she asked her brother to write a cheque on her behalf. The Landlord reused to accept the cheque. The Tenant submitted that her brother lived in shared accommodation at the time, so she permitted him to use her apartment during the day for work activities. The Tenant provided a letter dated February 9, 2023, from a property owner that provides that Mr. P.R. has resided at an address different from the dispute address from August 1, 2022 to January 31, 2023. The Tenant let her brother stay with her until February 4, 2023 when he moved to England.

The Tenant stated that she had a conversation with the Landlord S.C. who informed her that many tenants have received notices to end tenancy and that the Landlord has increasing costs. The Tenant stated that she was informed that if she offered the Landlord more money, they would consider cancelling the notice to end tenancy. The Tenant stated that the Landlord is trying to get more rent money and has increased parking fees; laundry fees, and offered money to tenants to move out.

The Tenant provided copies of letters from three other neighboring tenants living in the building that state they have only seen the Tenant going in and out of her apartment.

The Tenant stated that she is not subletting her apartment; but she did let her brother stay there for a period.

Analysis

In the matter before me, the Landlord has the burden of proof to provide sufficient reasons for ending the tenancy. Based on the evidence and testimony before me, I make the following findings:

When the approved sublet ended in June or July of 2022, no further permission was given by the Landlord permitting the Tenant to sublet. Since July 2022 the Tenant had her boyfriend stay with her August 12 until August 28, 2022 and she travelled back to Mexico in October 2022. She let her brother who lived elsewhere look after her unit while she was away.

The Tenant has the right to be away from her unit as much as she wants. I find that having her boyfriend stay with her for a short period is not a breach of the Act. I find that having her brother stay to look after her unit while she was away is responsible behavior and is not a breach of the tenancy agreement or Act. I find that having her brother write cheque to the Landlord on her behalf while she was away, is not persuasive proof that she was subletting.

I am not persuaded that the Tenant entered into a sublet agreement and received rent from another person while she was away staying with her boyfriend in Mexico. I find that the Landlord has not provided sufficient evidence that the Tenant has sublet the rental unit/ site without the Landlord's written consent; therefore, I cancel the One Month Notice to End Tenancy for Cause, dated February 3, 2023.

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

Section 72 of the *Act* gives me authority to order the repayment of a fee for an application for dispute resolution. As the Tenant was successful with her application, I order the Landlord to repay the \$100.00 fee that the Tenant paid to make application for dispute resolution. I authorize the Tenant to withhold \$100.00 from one future rent payment.

Conclusion

The Tenant's application is successful. The One Month Notice issued by the Landlord dated February 3, 2023, is cancelled.

The tenancy will 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: April 25, 2023

Residential Tenancy Branch