



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes CNC CNL MNDCT OLC LRE LAT AS FFT

Introduction

This dispute relates to a tenant's Application for Dispute Resolution (application) seeking remedy under the *Residential Tenancy Act* (Act) for the following:

1. Cancel 1 Month Notice to End Tenancy for Cause dated March 8, 2023 (1 Month Notice),
2. Cancel 2 Month Notice to End Tenancy for Landlord's Use of Property (2 Month Notice),
3. \$12,960 monetary claim for loss of quiet enjoyment,
4. Order directing landlord to comply with the Act, Regulation or tenancy agreement,
5. Order to set limits on the landlord's right to enter the rental unit, site or property,
6. Authorization to change the rental unit locks,
7. Permission to sublet the rental unit,
8. Filing fee.

The parties attended the teleconference hearing. The parties gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form and make submissions to me.

After service was addressed, the hearing continued. Words utilizing the singular shall also include the plural and vice versa where the context requires.

Preliminary and Procedural Matters

The parties confirmed that there was no 2 Month Notice issued and as a result, I will not consider that aspect of this application further.

Residential Tenancy Branch (RTB) Rules of Procedure (Rules) Rule 2.3 authorizes me to dismiss unrelated disputes contained in a single application. In this circumstance the tenant indicated several matters of dispute on the application, the most urgent of which is the application to cancel the 1 Month Notice. I will, therefore, only consider the tenant's request to cancel that notice at this proceeding, and the filing fee. The balance of the tenant's application is dismissed, with leave to re-apply.

The parties confirmed their respective email addresses and were advised that that the decision would be sent by email.

Issues to be Decided

- Should the 1 Month Notice be cancelled?
- If yes, is the tenant entitled to the filing fee?

Background and Evidence

The tenant stated that they received the 1 Month Notice by email on March 9, 2023. The tenant amended their application to dispute the 1 Month Notice on the same date, which is within the 10-day timeline under section 47 of the Act. The effective vacancy date is listed on the 1 Month Notice is April 30, 2023. The tenant continues to occupy the rental unit.

In the 1 Month Notice, the landlord has alleged 1 cause as follows:

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

The landlord writes the following in the Details of Cause(s) section:

Details of Cause(s): Describe what, where and who caused the issue and include dates/times, names etc. This information is required. An arbitrator may cancel the notice if details are not provided.

Details of the Event(s):

Landlord entered into a tenancy agreement with Tenant for a fixed term of one year effective on June 1, 2021 until May 31, 2022. While the tenancy was a month to month, on or about December 20, 2022 the Tenant requested the Landlord to sublet the premises, which the Landlord did not agree. However, Tenant unilaterally sublet the premises to three individuals without consent of the Landlord and his knowledge. Landlord does not know any of these individuals and does not have any information about who they are. Tenant's sublet without Landlord's written consent is a clear violation of section 34 of the Residential Tenancy Act. Therefore, the Act entitles Landlord to end the tenancy.

The landlord testified that they were advised by concierge Ulmer by phone that the tenant had 3 individuals sublet the rental unit and that the landlord has not granted permission to sublet as the landlord has never met the 3 individuals. The landlord confirmed that they have not submitted anything in writing from concierge Ulmer in support of the 1 Month Notice. In addition, the landlord did not call concierge Ulmer as a witness during the hearing to testify.

The tenant denies that they have sublet the rental unit and instead had a roommate named Morgan for February 2023 until mid-March 2023, when Morgan received a promotion and moved out. The parties agreed that the rental unit is comprised of 2 bedrooms and 2 bathrooms.

The tenant testified that they travel often for work and thought it would be more economical to sublet the rental unit when they were away but when the landlord denied their request, they decided to have a roommate instead. The tenant stated that the roommate helps to pay the rent. The tenant confirmed that they are planning to get a couple as roommates effective in May 2023. The tenant stated that when Morgan was their roommate, the tenant gave them the master bedroom and the tenant was occupying the second smaller bedroom.

The landlord submitted 2 colour photos in evidence. The landlord stated that the male clothing shown in the 2 colour photos, supports that the tenant was not residing in the rental unit and sublet it. The landlord claims the photo was taken on March 4, 2023. The tenant responded to the photo evidence and stated that the larger closet was in the master bedroom, so those clothes did belong to Morgan. In terms of the second photo, being the smaller closet in the second bedroom, the tenant stated that the photo did not show the entire closet and that their clothing was to the left of the other clothing showed and that the landlord only took a photo of half of the closet and not behind the other half of the closet. The photo appears to only show one half of the closet.

The tenant presented an email from concierge Alona dated March 10, 2023 which reads as follows:

Just to clarify things with you:

We spoke over the phone yesterday about issues with you and your landlord. I told you that Concierges will never call an owner unless there is something emergency or important things to deal with. I wasn't here on that day so I would not speak for any of the other Concierges as I don't really know what exactly happened that day. I can only assure you that I have never called any owner regarding this kind of issue. Concierges would only call an owner when it comes to safety and security of the property and of the residents.

And yes, when it comes to any issue between a tenant and a landlord, we don't engage, that's between the 2 parties.

I hope this helps.

Alona

The landlord stated that they have not approved the tenant to have a roommate, which I will address later in this decision.

The tenant confirmed that that they have never had 3 men as roommates and only had Morgan who had a male guest for 4 days while the guest was training Morgan when in town.

Analysis

Based on the above, the testimony of the parties, and on a balance of probabilities, I find as follows.

The 1 Month Notice has an effective vacancy date of April 30, 2023. The tenant disputed the 1 Month Notice on March 9, 2023, which is within the 10-day timeline provided for under section 47 of the Act to dispute a 1 Month Notice.

Once a 1 Month Notice is disputed, the onus of proof reverts to the landlord to prove that the 1 Month Notice is valid. The landlord did not submit any documentary evidence from concierge Ulmer, nor did they call concierge Ulmer as a witness. An allegation without supporting evidence to support that allegation, such as witness testimony or a statement from a witness is not sufficient evidence to prove a 1 Month Notice, especially when a tenant disputes the reason alleged on the 1 Month Notice. At the very least, I would have expected the landlord to have submitted a statement from concierge Ulmer or called them as a witness.

Furthermore, I find the tenant's evidence from concierge Alona to be of significant weight as I find that it is more likely than not that a concierge would not want to be become involved in a dispute between a landlord and tenant. Based on the above, I find the landlord has not met the burden of proof to support that the 1 Month Notice is valid.

Consequently, I cancel the 1 Month Notice due to insufficient evidence from the landlord to support the one cause listed.

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

As the tenant's application had merit, I find that the tenant is entitled the \$100 filing fee.

I ORDER a one-time rent reduction in the amount of **\$100** from a future month of rent, in full satisfaction of the filing fee pursuant to sections 62(3) and 72 of the Act.

I will now address the landlord's comment about a roommate. As the rental unit is a 2 bedroom and 2 bathroom unit, I find the landlord may not prevent the tenant from having a roommate. The tenant is responsible for the conduct of their roommate; however, I find it would be unreasonable for the landlord to attempt to deny the tenant from having a roommate during the tenancy.

Conclusion

The tenant's application is successful.

The 1 Month Notice issued by the landlord dated March 8, 2023 is cancelled and is of no force or effect.

The tenancy shall continue until ended in accordance with the Act.

A \$100 one-time rent reduction has been granted for the filing fee.

The decision will be emailed to both parties as confirmed during the hearing.

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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 27, 2023

Residential Tenancy Branch