



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Introduction

This hearing dealt with the Tenants' Applications for Dispute Resolution under the *Residential Tenancy Act* (the "Act") for:

- Cancellation of the Landlord's One Month Notice to End Tenancy for Cause (the One Month Notice) under section 47 of the Act
- An order allowing the Tenant to assign or sublet because the Landlord's permission has been unreasonably withheld under sections 28 and 58 of the Act
- An order requiring the Landlord to comply with the Act, regulation or tenancy agreement under section 62 of the Act
- Authorization to recover the filing fee for this application from the Landlord under section 72 of the Act

Preliminary Matters

The following issues are dismissed with leave to reapply:

- An order requiring the Landlord to comply with the Act, regulation or tenancy agreement under section 62 of the Act

Residential Tenancy Branch Rules of Procedure, Rule 2.3, states that if, in the course of the dispute resolution proceeding the Arbitrator determines that it is appropriate to do so, the Arbitrator may sever or dismiss the unrelated disputes contained in a single application with or without leave to apply.

I am exercising my discretion to dismiss the issue identified in the application with leave to reapply as these matters are not related. Leave to reapply is not an extension of any applicable time limit.

Issue(s) to be Decided

Should the Landlords' One Month Notice be cancelled? If not, are the Landlords entitled to an Order of Possession?

Are the Tenants entitled to an order allowing them to sublet or assign the tenancy agreement?

Are the Tenants entitled to recover the filing fees for these applications from the Landlords?

Background and Evidence

I have reviewed all evidence, including the testimony of the parties, but will refer only to what I find relevant for my decision.

Evidence was provided showing that this tenancy began on October 1, 2014, with a monthly rent of \$1,644.83, due on first day of the month, with a security deposit in the amount of \$550.00 and a pet damage deposit of \$550.00

The Landlords served the Tenants with a One Month Notice for Cause on July 5, 2023 and the Tenants have applied to dispute it. The reason indicated on the One Month Notice was the Tenants have assigned or sublet the rental unit without the landlord's written consent. The Tenants have also applied for an order to be allowed to sublet the rental unit.

One Month Notice

Landlord BF testified that the Tenants had requested to sublet, and they engaged in negotiations over the topic. Once more information came to light about who the sublet would be and the fact that they had pets, the Landlords were no longer agreeable to any negotiations around subletting. The tenancy is a month-to-month tenancy and the Landlords were under no obligation to sublet the rental unit.

Landlord BF argues that the Tenants are no longer occupying the rental unit and Tenant RJR's daughter (the "Daughter") and their partner are occupying the rental unit with their two dogs. To support this argument, Landlord BF advised that they are at the rental unit a couple of times a week and they have only ever seen Tenant KM once and have not seen their cars or their dogs out. Previously, they would see the Tenants outside all the time and now the Landlords only see the Daughter and her partner. Additionally, the Daughter's partner had internet installed at the rental unit and the Tenants advised they had their internet disconnected from the rental unit.

Tenant KM argued that the Daughter is a roommate and they advised the Landlords on May 29, 2023, that the Daughter would be moving in as a roommate. In the past the Tenants had roommates and would advise the Landlords when they were moving in.

Tenant KM argued they are splitting their time between the rental unit and another residence, as they deal with the estate of Tenant RJR's mother, but they have not transferred their rights under the tenancy, have not moved their possessions and still have keys to the rental unit. When asked how many days a week the Tenants spend at the rental unit, the Tenants were unable to provide any estimate and stated, "it varies, and with the summer we were away a lot". The Tenants argued the Landlords are acting in bad faith by issuing the One Month Notice so they can increase rent.

Request to Sublet

The Tenants also argued that they don't see a reason why they should not be allowed to sublet and that the denial by the Landlords is another act of bad faith.

Landlord BF argued the tenancy is a month-to-month tenancy and they are under no obligation to allow the Tenants to sublet.

Analysis

When two parties to a dispute provide equally plausible accounts of events or circumstances related to a dispute, the party making the claim has the burden to provide sufficient evidence over and above their testimony to establish their claim.

Should the Landlord's One Month Notice be cancelled? If not, is the Landlord entitled to an Order of Possession?

Section 47 of the Act states that a landlord may issue a Notice to End Tenancy for Cause to a tenant if the landlord has grounds to do so. Section 47 of the Act states that upon receipt of a Notice to End Tenancy for Cause the tenant may, within ten days, dispute the notice by filing an application for dispute resolution with the Residential Tenancy Branch. If the tenant files an application to dispute the notice, the landlord bears the burden to prove the grounds for the One Month Notice.

As the Tenants disputed this notice on July 7, 2023, and since I have found that the One Month Notice was served to the Tenants on July 5, 2023, I find that the Tenants have applied to dispute the One Month Notice within the time frame allowed by section 47 of the Act. I find that the Landlords have the burden to prove that they have sufficient grounds to issue the One Month Notice.

According to Policy Guideline 19, "sublet" under the Act refers to the situation where the original tenant moved out of the rental unit, granting exclusive occupancy to a subtenant, pursuant to a sublease agreement. This must be for a period shorter than the term of the original tenant's tenancy agreement. If the original tenant transfers their

rights to a subtenant under a sublease agreement and vacates the rental unit, a landlord/tenant relationship is created.

Policy Guideline 19 differentiates a sublet from a tenant allowing an additional occupant to move in and a tenant renting out a portion of the rental unit to a roommate. The key is that for there to be a sublet under the Act, there must be a landlord/tenant relationship between the tenant and the subtenant via a sublease agreement, whether written or oral, for a term shorter than the original term of the tenancy.

The Tenants argued that the Daughter is a roommate and they point to the email from May 29, 2023 where they advise the Landlords the Daughter will be moving in as a roommate. Additionally, they argued that they still have keys to the rental unit, have not moved any belongings and have not given up any of their rights under the tenancy.

In contrast to this, Landlord BF asserts that the Tenants are now living at Tenant RJR's mother's home and have given the daughter their rental unit. Landlord BF explained there are indicators that the Tenants are no longer living at the rental unit. For example, their cars, dogs and themselves are never seen at the rental unit and the Daughter's boyfriend had his own internet installed at the rental unit.

A tenant has the right to be away from their rental unit as much as they want, what matters is whether the Tenants have moved out to allow a sub tenant to live in the rental unit. Both parties have presented equally probable scenarios; however, the onus falls on the Landlords to shift the balance in their favour. While the cancelling of the internet by the Tenants and the Tenants not being around the rental unit calls into question if they are still living at the rental unit, I find that the Landlords have not provided sufficient evidence to substantiate that the Daughter is subletting and not a roommate. I have no evidence that the Tenants belonging have been removed from the rental property, that they have transferred their rights under the tenancy to the Daughter or that they have entered into a sublease agreement, oral or written, with the Daughter.

As such, I find the Landlords failed prove, on a balance of probabilities, the ground of the Two Month Notice. Accordingly, the Two Month Notice is cancelled and of no force or effect.

Are the Tenants allowed to assign or sublet because the Landlord's permission has been unreasonably withheld under sections 28 and 58 of the Act?

There is no requirement under the Act for the Landlords to consent to a sublease if the tenancy is a month-to-month tenancy. I find that it is within the Landlords right to decline to consent to the Tenants request to sublet since the tenancy is a month-to-month tenancy. I therefore dismiss the Tenants' application for an order allowing them to sublet the rental unit.

Are the Tenants entitled to recover the filing fee for these applications from the Landlords?

As the Tenant were partially successful in one of their applications, I find that the Tenants are entitled to recover \$100.00 of one of the filing fees under section 72 of the Act. I authorize the Tenant to deduct \$100.00 from their next rent payment.

Conclusion

The Tenant's application is granted for cancellation of the One Month Notice under section 47 of the Act.

The One Month Notice of July 5, 2023, is cancelled and is of no force or effect. This tenancy continues until it is ended in accordance with the Act.

The Tenant is authorized to deduct \$100.00 from their next rent payment since they are entitled to recover the filing fee for one of the applications.

The Tenant's application for an order allowing them to sublet or assign the tenancy agreement is dismissed, 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: September 20, 2023

Residential Tenancy Branch