



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Introduction

This hearing was convened under the *Residential Tenancy Act* (The *Act*) in response to cross applications from the parties.

The Tenant filed their application on September 2, 2023, and seeks the following:

- Cancellation of the Landlord's One Month Notice to End Tenancy for Cause (the "Notice").
- An Order allowing the Tenant to assign or sublet because the Landlord's permission has been unreasonably withheld.
- An order to the Landlord to comply with the *Act*, *Regulation* or Tenancy Agreement.
- Authorization to recover their filing fee from the Landlord.

The Landlord filed their application on September 19, 2023, and seeks the following:

- An order of possession pursuant to the Notice.
- Authorization to recover their filing fee from the Tenant.

Both parties testified that they served the other party with their application and evidence, by registered mail; and both parties acknowledged receiving the other party's registered mail package in accordance with the *Act*.

Background and Evidence

The Landlord's agents, E.D. and C.Z., who introduced themselves as the building manager and the property manager, respectively, appeared at the hearing to provide testimony and evidence.

Evidence was provided showing that this tenancy began on November 1, 2023, with a current monthly rent of \$1,570.00.

Subletting

C.Z. testified that the Landlord received an email from the Tenant, on June 12, 2023, wherein the Tenant requested permission to sublet the Rental Unit for approximately

three months, starting on or about July 1, 2023. An agent of the Landlord then emailed an application form to the Tenant, on June 13, 2023, and asked the Tenant to have the form filled out by the new prospective tenant (the June 13 Email).

C.Z. testified that they were not contacted again, by the Tenant, regarding subletting, until July 7, 2023, on which day the Tenant sought permission to sublet their unit to a couple by the names of N.S.N. and S.S.N. (the First Couple). Documentary evidence submitted by the Landlord indicates that the Tenant contacted the Landlord on July 6, 2023, by email, wherein they discuss the suitability of the First Couple and attached an application form along with a copy of the First Couple's passport. The Tenant states that the First Couple would like to move-in to the Rental Unit on August 14, 2023, and stay for approximately four months.

The parties agreed that the Landlord never provided written consent for the First Couple. The Tenant testified that they never received a response regarding the First Couple, but they took the June 13 Email as a general consent for subletting.

In an email sent to C.Z. by the Tenant, on July 17, 2023, the Tenant informs C.Z. that they have "arranged to rent out the [Rental Unit] to a couple arriving this Thursday for a six-month period" (the New Couple).

The Tenant testified that they received permission for the New Couple from another agent of the Landlord by the name of M., who left a voicemail for them on July 16, 2023 (Agent M). C.Z. testified that in their email to C.Z., regarding the New Couple, the Tenant states that Agent M called them on July 7, 2023, not on July 16, 2023.

The Tenant testified again that Agent M called and left them a voicemail on July 16, 2023, not on July 7, 2023, and gave them permission to sublet the Rental Unit. I have reviewed an email, submitted by the Tenant, and referenced by the Tenant during their testimony, which indicates that Agent M called them on July 7, 2023. In this email, dated July 17, 2023, the Tenant writes to C.Z. and admits that Agent M called and left them a voicemail on July 7, 2023. In this email, the Tenant also transcribes Agent M's voicemail for C.Z. (the Transcription).

C.Z. testified that the Tenant signed the lease with the New Couple without any authorization from the Landlord. C.Z. also testified that the Tenant was informed, on July 12, 2023, via phone call, that they are no longer allowed to sublet their unit to anyone because the Landlord has evidence that the Tenant has been operating an illegal Airbnb business in the Rental Unit for approximately two months. The Tenant testified that the New Couple never moved into the Rental Unit.

Airbnb business

E.D. testified that on July 6, 2023, they were informed by a caretaker at the building in which the Rental Unit is in (the Building) that there are strangers visiting the Rental Unit on a regular basis. E.D. testified that when they confronted the Tenant about this on July 7, 2023, they were informed by the Tenant that the individuals witnessed by others in the building are in fact the Tenant's guests from India and Germany, and that they are visiting for three to four days.

E.D. testified that they spoke to at least one tenant from another rental unit in the Building, who informed them that they had spoken to the Tenant's guests, specifically two ladies from Germany, who had informed them that they are guests from Airbnb.

E.D. testified that they then found a listing of the Rental Unit on Airbnb, which they immediately shared with C.Z (the Airbnb Listing). They also reviewed CCTV footage which showed several different individuals, with suitcases, accessing the Rental Unit through the Rental Unit's private patio door. The Landlord has submitted several colour photos, as well as colour screenshots of the CCTV footage testified to.

On July 19, 2023, C.Z. sent a letter to the Tenant, a copy of which has been submitted as evidence, informing them that the Landlord is aware of the Tenant's Airbnb Listing, and that they must cease all business activities immediately, pursuant to section 14 of their tenancy agreement, which states:

"The Tenants and [their] guests must use the rental unit for private residential purposes and not for any illegal, unlawful, commercial, political or business purpose..."

E.D. and C.Z. testified that although the Airbnb Listing was removed soon after, the commercial activity continued, because they continued to receive complaints from other tenants in the Building regarding the Rental Unit. E.D. testified that since the end of August 2023, they have only seen the Tenant visiting the Rental Unit.

On August 18, 2023, C.Z. sent a second letter to the Tenant regarding commercial activity and asked the Tenant to stop immediately.

The Landlord served the Notice to the Tenant on August 29, 2023, citing breach of a material term that was not corrected within a reasonable time after written notice to do so.

The Tenant testified that they have never used the Rental Unit for commercial activity, but they agreed that they listed the Rental Unit on Airbnb. They testified that they are

currently “cohosting” several other units in the area, and they listed the Rental Unit on Airbnb for market analysis purposes.

The Tenant testified that they continue to reside at the Rental Unit, because the Landlord refused to grant them permission to sublet the Rental Unit. They further testified that two of the three individuals in the pictures provided by the Landlord as evidence of Airbnb hosting are their friend and their mother.

The Landlord submitted screenshots of the Airbnb Listing, along with Airbnb calendars, which indicate that the Rental Unit was booked by guests over the following periods:

- All of July 2023, except for July 4 and July 16 to July 21.
- All of August 2023, except for August 4, 6, 9, 30, and 31.
- All of September 2023, except for September 1-9.

The Tenant testified that just because guests book the Rental Unit via the Airbnb website, it does not mean they are allowed to use the booked space without first contacting the host (in this case, the Tenant). The Tenant testified that they must provide final approval and accept the guests, which they never did. The Tenant reiterated that they have never used the Rental Unit for commercial activity and that the Airbnb Listing was for market analysis only.

Illegal Surveillance

The Tenant testified that they are being subjected to illegal surveillance by the Landlord’s agents, because they are not complying with “OIPC rules for security cameras”. Furthermore, the Landlord is not informing residents in the building that they are being monitored by security cameras.

E.D. testified that there are CCTV cameras by the Building’s front entrance, in the main lobby, in the garbage room, and inside the parking space. There is also one additional camera by E.D.’s office that was utilized to monitor movement of suspicious activity in the Building. Finally, the Landlord’s agents testified that throughout the Building there are signs warning residents that there are security cameras in the Building.

Analysis

Commercial activity

Section 47 of the *Act* permits a landlord to end a tenancy for cause. The Landlord has cited breach of a material term, in this case commercial activity in the form of Airbnb

hosting, which was not corrected within a reasonable time after a written notice to do so, as the cause for ending the tenancy.

Throughout the hearing, the Tenant provided a confusing testimony. The Landlord's testimony was organized and backed with documentary evidence. Ultimately, the Landlord has the onus to prove, on a balance of probabilities, that the Tenant rented the Rental Unit on Airbnb in breach of their tenancy agreement, that the breach was a breach of a material term, and that the Tenant did not stop renting the Rental Unit after a reasonable time from July 19, 2023 or August 18, 2023, the dates of the two written notices to the Tenant regarding their Airbnb activity.

When two parties provide equally plausible version of events, the party bearing the onus to prove their claim must provide additional evidence to tip the balance in their favour. In this case, the Landlord has provided screenshots of the Airbnb Listing, and its accompanying calendars, to show that the Rental Unit was being used for commercial activity. The Airbnb Listing clearly indicates that the Rental Unit was booked for a significant portion of July to September 2023. In addition, the Landlord has provided pictures showing two individuals, with suitcases, approaching the Rental Unit through the Rental Unit's patio door. The Tenant admitted that this was their Airbnb Listing and that they are cohosting several other units in the area. But they testified that they have never acted on their Airbnb bookings for the Rental Unit.

I do not accept the Tenant's explanation for the Airbnb Listing and calendars. The Tenant testified that they are engaged in market analysis and that without providing final approval on the Airbnb website, guests cannot act on their booking. The Tenant did not provide any evidence of this explanation beyond their oral testimony. The Tenant also did not provide any evidence to show that the three individuals in the Landlord's pictures are their friend and their mother. Considering the totality of the evidence before me and the testimony of the parties, I find it more likely than not that the Tenant was engaged in commercial activity in the Rental Unit by renting the Rental Unit on Airbnb. Therefore, I find that the Tenant breached term 14 of the parties' tenancy agreement.

The Residential Tenancy Branch's Policy Guideline #8 defines a material term as "a term that the parties both agree is so important that the most trivial breach of that term gives the other party the right to end the agreement."

Policy Guideline #19 states that:

If a tenant is allowing their rental unit or space within their rental unit to be used for a commercial venture, such as a vacation or travel accommodation, a landlord may issue a One Month Notice to End Tenancy for a breach of a material term. Variables such as

the terms of the tenancy agreement and whether a tenant remains in occupation of the rental unit will be considered on a case-by-case basis by an arbitrator.

In determining materiality, I must concern myself with the true intention of the parties at the start of the tenancy and not the consequences of the breach itself. In this case, section 14 of the parties' agreement states that the Tenant is to use the Rental Unit for private residential purposes only and not for any commercial or business purposes. In the same section of the agreement there is, among other things, discussion of the type of nails that can be used by the Tenant in the Rental Unit, whether appliances can be repaired by the Tenant and how the Tenant must take preventative measures regarding mould and mildew. The section is also not initialed by the parties and there is no indication that the parties specifically discussed commercial activities at the start of the tenancy. Neither of the Landlord's agents testified as to why they consider this term to be so significant that any trivial breach of it should result in the end of the tenancy. Furthermore, when I read section 14 of the tenancy agreement in context, I find that the parties placed similar importance in "business purposes" as they did in the Tenant's ability to repair or remove appliances in the Rental Unit. I therefore cannot find the Tenant's breach to have been a material breach simply because the first sentence of section 14 of the tenancy agreement states that the Rental Unit is to be used for private residential purposes.

In the result, the Landlord's Notice is cancelled and is of no force or effect.

Subletting

I find the Landlord's denial of subletting reasonable in the circumstances. The Tenant was not honest with the Landlord regarding their Airbnb Listing and the First Couple. In the case of the New Couple, the Tenant attempted to sublet the Rental Unit without prior written authorization from the Landlord. The Tenant testified that they have blanket authorization from the Landlord based on their communication with the Landlord's agents. I find no such blanket authorization. In fact, the Landlord's agents have been unequivocal in their disapproval.

The Tenant testified that Agent M authorized them to sublet the Rental Unit. They invited me to review their July 17, 2023, email to the Landlord which includes their Transcription of Agent M's July 7, 2023, voicemail to the Tenant. I have reviewed the Transcription and I cannot agree with the Tenant that Agent M provided them permission to sublet to Rental Unit to the New Couple. On July 7, 2023, the Landlord and their agents were not aware of the New Couple and were in discussion with the Tenant regarding the First Couple.

Furthermore, pursuant to section 4 of the tenancy agreement, the tenancy is now a month-to-month tenancy. Section 34(2) of the *Act* refers to fixed term tenancies with six months or more remaining in their term. Therefore, pursuant to section 34(1), the Tenant cannot assign or sublet the Rental Unit without written authorization from the Landlord.

Compliance with the *Act*

The Tenant testified that the Landlord was targeting the Tenant with their installation of security cameras. I find the placement of cameras in the Building reasonable and decline to make an order for compliance. In addition, the Tenant failed to identify which section of the *Act* the Landlord was purportedly breaching. Section 28(a) of the *Act* states that a tenant is entitled to reasonable privacy. The Tenant testified that their guests are being questioned when they enter the Building. E.D. denied targeting the Tenant's guests and testified that they only investigate suspicious activity in common areas of the Building for the benefit of the Building's residents, which I accept and find reasonable.

Conclusion

This tenancy continues until it is ended in accordance with the *Act*.

The Tenants' application to cancel the Notice is granted, along with their application to recover their filing fee from the Landlord. The Tenant is ordered to withhold \$100.00 from their next rent payment on a **one-time** basis in satisfaction of this Order. The balance of the Tenant's application is dismissed without leave to reapply. The Landlord's 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 25, 2023

Residential Tenancy Branch