



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes CNC, FF

Introduction

This matter dealt with an application by the Tenant to cancel a Notice to End Tenancy for Cause as well as to recover the filing fee for this proceeding.

At the beginning of the hearing, the Landlord claimed that she had not been served with a copy of the application and Notice of Hearing in this matter but had only received the Tenant's evidence package. The Tenant claimed that he personally served the Landlord with a copy of his Application and Notice of Hearing. The Landlord did not wish to adjourn this matter so that she could be re-served with the Application and accordingly I find that the Landlord waived this requirement.

Issues(s) to be Decided

1. Is the Landlord entitled to end the tenancy?

Background and Evidence

This tenancy started on May 1, 2007. The Parties entered into a one year fixed term tenancy on October 1, 2007 when the Tenant took over a garage suite in the rental property. The Tenant says that the Parties entered into a further one year fixed term tenancy in September, 2008, however the Landlord denies this and says it is currently a month to month tenancy. Rent is payable on the first day of each month.

The Landlord served the Tenant by registered mail on April 8, 2009 with a copy of a 30 Day Notice to End Tenancy for Cause dated April 8, 2009. Pursuant to s. 90 of the Act, the Tenant is deemed to have received this notice on April 13, 2009. The Notice alleges the following grounds:

- The Tenant is repeatedly late paying rent; and
- The Tenant has assigned or sublet the rental unit without the Landlord's written consent.

The Landlord said that she discovered in September, 2008 that the Tenant was renting rooms in the rental unit to others without her written consent. The Tenant admitted he

was renting rooms to others but argued that he was still living in the rental unit and was the only Tenant under the tenancy agreement.

The Landlord also claimed that the Tenant has been repeatedly late paying rent and that she has not condoned any of the late payments. In support, the Landlord provided a copy of a cheque dated May 2, 2007, a returned cheque dated January 1, 2009 and a cheque dated May 2, 2009. The Landlord said that the Tenant was also late paying rent for 10 out of 12 months in 2008. The Landlord said she had an arrangement with the Tenant that she would pick up his rent cheque between 3 and 4 p.m. on the first day of each month. The Landlord claimed, however, that she would often have to hunt down the Tenant for payment. On January 10, 2009, the Landlord gave the Tenant a letter advising him that rent was to be paid by certified funds only and that she would pick up the rent payment between 3 and 4 p.m. on the 1st day of each month.

The Tenant admitted that he gave the Landlord a cheque dated May 2, 2007 and that his cheque dated January 1, 2009 was returned for insufficient funds. The Tenant claimed that he tried to give the Landlord a cheque for rent on May 1, 2009 but she refused to take it and wanted certified funds or cash. The Tenant said the Landlord returned the following day and took a cheque in payment of cash but asked him to change the date on the cheque to May 2, 2009. The Tenant claimed that he did not always leave a cheque in his mail box on the 1st of each month for the Landlord because she was often not available to pick up it up for a couple of days. The Landlord denied this.

Analysis

RTB Policy Guideline #19 (Assignment and Sublet) sets out the distinction between a sublease and an assignment of a tenancy agreement. Subletting **does not** occur where a tenant rents a room to another occupant because the occupant does not acquire any rights or obligations under the tenancy agreement (as a tenant). Instead the Tenant remains solely responsible for carrying out the terms of the tenancy agreement including the obligation to pay rent and to be responsible for any damages caused by any other occupants on the rental property. If a Tenant is evicted, then any occupants renting from him will also be evicted because they have no rights under the tenancy agreement.

In this case, I find that there is no evidence that the Tenant has sublet or assigned the tenancy agreement. In particular, the Tenant continues to reside in the rental unit and is solely responsible under the Parties' tenancy agreement for the payment of rent and so forth. Consequently, this ground of the Notice cannot succeed.



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RTB Policy Guideline #38 (Repeated Late Payment of Rent) states that a minimum of 3 late payments is necessary to uphold a notice under these provisions. It further states that if the late payments are too far apart, the payments may not be considered to be "repeatedly late." Generally, the late payments must be within a one year period of time. In this case, I find that the Tenant did make 3 late rent payments, however, I find that the late payment in May, 2007 is too far removed to be considered with the late payments in January and May of 2009. As a result, I find that the Tenant has not been repeatedly late paying rent and this ground of the Notice cannot succeed.

Consequently, I find that there is insufficient evidence to uphold the 30 Day Notice to End Tenancy for Cause dated April 8, 2009. The Notice is hereby cancelled and the tenancy will continue.

As there have been difficulties between the Parties in setting a workable procedure for the payment of rent, the Parties agreed and pursuant to s. 62(3) of the Act **I Order that commencing June 1, 2009 that the Landlord will collect rent payments from the Tenant between 3 and 4 pm on the 1st day of each month. The Tenant's rent payments are to be made by way of certified funds or cash. In the event the Tenant pays by cash, the Landlord must provide him with a receipt for payment at the time of payment.**

I find that this is not an appropriate case to award reimbursement of the filing fee for the proceeding and that part of the Tenant's application is dismissed.

Conclusion

The 30 Day Notice to End Tenancy for Cause dated April 8, 2009 is cancelled and the tenancy will continue.

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: May 29, 2009.

Dispute Resolution Officer