



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes CNC, AAT, AS, DRI, LRE, FF

Introduction

This hearing dealt with the tenant's Application for Dispute Resolution to cancel a notice to end tenancy, dispute an additional rent increase, to seek an order to set conditions on the landlords' right to enter the rental unit and to allow the tenant to sublet or assign the rental unit.

The hearing was conducted by teleconference with the landlord and tenant attending.

At the outset of the hearing the landlord indicated that she had only received notice of the hearing and a copy of the tenant's application but received no other evidence. I asked the parties if they would consider an adjournment, to facilitate re-service of the tenant's evidence. The landlord requested we proceed with the hearing.

Issues(s) to be Decided

The issues to be decided are whether the tenant is entitled to cancel a 1 Month Notice to End Tenancy for Cause; to disregard an additional rent increase; to an order setting conditions on the landlord's right to enter the rental unit; to an order allowing access to the unit for the tenant and guests; to allow the tenant to assign or sublet; and to a monetary Order to recover the filing fee from the tenant for the cost of the Application for Dispute Resolution, pursuant to sections 29, 30, 34, 42, 47, 55, 67, and 72 of the *Residential Tenancy Act (Act)*.

Background and Evidence

The landlord submitted into evidence the following documents:

- A summary of the dispute dated February 1, 2010;
- A copy of a rent cheque for February, 2010;
- A photograph of broken mirrored door;
- A copy of a letter from the tenant to the landlord dated January 6, 2010, regarding the hearing;
- A copy of a letter from the tenant to the landlord giving notice to end the tenancy on March 31, 2010;
- A witness statement dated January 29, 2010 from the landlord's co-worker regarding a phone conversation;

- A copy of a tenancy agreement and addendum signed by the parties on March 20, 2006 for a month to month tenancy beginning on April 1, 2006 for a monthly rent of \$1,200.00 due on the 1st of the month with a security deposit of \$600.00 paid on April 1, 2006. The tenancy agreement stipulates the tenant may sublet with written consent from the landlord;

The tenant submitted the following documents:

- A copy of a document entitled Long-Term Apartment Rental Agreement as an agreement between the tenant and a sub tenant;
- A summary of the dispute dated January 26, 2010;
- Photographs of the flooring and washer/dryer closet with no door;
- A copy of a letter from the landlord to the tenant dated December 28, 2009 requesting the names of the sub tenants and identifying some repairs to be made by the tenant;
- A copy of a 1Month Notice to End Tenancy for Cause dated December 31, 2009 with an effective vacancy date of January 31, 2010, citing the tenant has not done required repairs of damage to the unit/site and the tenant has assigned or sublet the rental unit without landlord's written consent;
- A letter dated January 20, 2010 from the landlord to the tenant providing notice of an inspection for January 25, 2010, to re-request the names of the sub tenants and rescinding the rent increase scheduled for February 1, 2010;
- A copy of a letter from the tenant to the landlord dated January 6, 2010, regarding the hearing; and
- A copy of a letter from the tenant to the landlord giving notice to end the tenancy on March 31, 2010.

The landlord testified that she had been unaware of the tenant subletting the rental unit until January of 2009 when the building manager informed her of such. She stated that any time they completed an inspection they provided written notice, posted on the door, and provided the tenant with a phone call advising him of their intent to inspect.

The landlord stated that there was never any reason to suspect a sub tenancy until they went to the rental unit in late August or early September to make some repairs that they met a new person who indicated he was living there. She further stated that in December they went back to the unit for different repairs and another woman was in the rental unit who identified that she lived there.

The tenant testified that the landlord knew from the beginning of the tenancy that the tenant would be renting out the unit as a furnished "relocation" rental unit. He testified that the landlord was aware that the tenant had a number of units in the same complex as this rental unit.

During the hearing, I asked both parties if either had a copy of a written agreement from the landlord consenting to the tenant subletting the rental unit. Both parties agreed no written agreement had been made.

The landlord testified that she served the Notice to End Tenancy on December 31, 2009 both at the rental unit and at the tenant's business address that the landlord stated she thought was the tenant's home address, by posting the notice on the door. The tenant confirmed that he received the notice when he went for a walk on January 1, 2010.

Analysis

Section 34 of the *Act* states unless a landlord consents in writing, a tenant must not assign a tenancy agreement or sublet a rental unit. Section 47 allows a landlord to end a tenancy if tenant has sublet the rental unit without first obtaining the landlord's written consent. In addition the tenancy agreement, signed by both parties, clearly stipulates the tenant may sublet the rental unit if the landlord provides written consent.

As the parties agree that no written consent was provided to the tenant, I dismiss the tenant's application to cancel the 1 Month Notice to End Tenancy for Cause issued on December 31, 2009. The landlord requested an order of possession during the hearing. Upon further discussion the landlord agreed to have the order of possession to be effective as of February 28, 2010.

As the tenancy is now set to end I discussed with the applicant whether or not he wanted to pursue the other matters on his application. The applicant agreed to amend his application to exclude the matters of the: additional rent increase; to set conditions on the landlords' right to enter the rental unit and to allow the tenant to sublet or assign the rental unit.

Conclusion

I find that the landlord is entitled to an Order of Possession effective **February 28**. This order must be served on the tenant and may be filed in the Supreme Court and enforced as an order of that Court.

As the tenant was unsuccessful in his application, I dismiss his request for recovery of the filing fee.

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: February 11, 2010.

Dispute Resolution Officer