



Dispute Resolution Services

Residential Tenancy Branch
Ministry of Housing and Social Development

Decision

Dispute Codes:

CNC

Introduction

This Application for Dispute Resolution by the tenant was seeking to cancel a One-Month Notice to End Tenancy for Cause dated March 31, 2010 which purported to be effective April 1, 2010. Both parties appeared and gave testimony in turn.

The One-Month Notice to Notice to End Tenancy for Cause, a copy of which was submitted into evidence, indicated that the tenant had engaged in illegal activity that has or is likely to adversely affect the quiet enjoyment, safety, security or physical well-being of the landlord or another occupant. And that the tenant has assigned or sublet the rental unit/site without the landlord's written consent.

Issue(s) to be Decided

The tenant is disputing the basis for the notice and the issues to be determined based on the testimony and the evidence are:

- Whether the criteria to support a One-Month Notice to End Tenancy under section 47 of the *Act*, has been met, or whether the notice should be cancelled on the basis that the evidence does not support the cause shown.

Burden of Proof: The burden of proof is on the landlord to establish that the notice was justified.

Background and Evidence

The tenancy began on July 31, 2007 and rent was \$720.00 per month. The unit was a lower two-bedroom suite in a home that was occupied by the landlord on the upper floor. A security deposit of \$360.00 was paid. The tenant testified that there was a written tenancy agreement but no copy of this was submitted into evidence. A copy of a One-Month Notice to End Tenancy for Cause dated March 31, 2010 with an effective date of April 1, 2010 was submitted into evidence.

The landlord had also submitted into evidence a copy of a letter from the landlord to the tenant dated March 31, 2010, the same date that the One-Month Notice was issued. This communication advised the tenant that keeping the window open for her cat to come and go was not permitted and that the tenant violated the tenancy when she "sublet" a portion of the unit without the landlord's consent. The letter stated that because of the above conduct a One-Month Notice to End Tenancy was issued. There were no copies of any earlier warnings in evidence.

The landlord gave testimony about the tenant jeopardizing the safety of the landlord by bringing another person to live in the unit without the landlord's approval and leaving windows open, which also caused extra costs. The landlord stated that this prompted the landlord to seek an end to the tenancy.

The tenant testified that she had left the window slightly open but was careful not to let the heat out. The tenant testified that she had briefly considered adding another occupant to share her suite, but this did not work out and the additional resident only remained for 2 weeks and had since left. According to the tenant, there was nothing in the written tenancy agreement prohibiting additional occupants and the tenant felt that she was not in violation of the tenancy agreement. However, the tenant stated that in contemplating another occupant to share the suite, she had been willing to pay additional rent to the landlord .

The tenant stated that she was seeking to have the Notice to end tenancy cancelled. The tenant added that she was anticipating ending the tenancy on her own anyway, once alternate accommodation was found.

Analysis

Section 47 of the Act states that a notice for cause must end the tenancy effective on a date that is: (a) not earlier than one month after the date the notice is received, and (b) the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.

Given the above, I find the effective date for the notice is not compliant with section 47 of the Act and pursuant to my authority under section 53, I amend the date to comply with the Act by changing it to read, April 30, 2010.

Section 6 of the Act states that the rights, obligations and prohibitions established under the Act are enforceable and also that the terms agreed to in a tenancy agreement are enforceable through dispute resolution. Section 58 of the Act states that, except as restricted under the Act, a person may make an application for dispute resolution in relation to disputes over

(a) rights, obligations and prohibitions under this **Act**;

(b) rights and obligations under the terms of a **tenancy agreement** that:

- (i) are required or prohibited under this Act, or
- (ii) relate to the tenant's use, occupation or maintenance of the rental unit, or common areas or services or facilities.

In order to end a tenancy under section 47 for cause a landlord would need to prove that the tenant was in violation of either the Act or a the tenancy agreement signed by the parties.

In regards to the landlord's allegation that the tenant had engaged in illegal activity, I find that, even if I accept that the conduct being alleged had occurred, leaving windows open and adding a second occupant would not meet the definition of an "illegal activity".

In regards to the allegation that the tenant "sublet" the unit, I find that the tenant may have added another occupant. However, allowing a second occupant to

move into the unit to share the premises does not fit the definition of “subletting”, which is described as a lease being given by the tenant to a third person for a shorter period than the original lease that the tenant has with the landlord. In this instance, the tenancy is a month-to-month tenancy and is not for a fixed term. As such the tenant could not possibly sublet the unit because no fixed-term lease exists.

In regards to the landlord’s objection to the tenant’s actions in adding a second resident without the landlord’s consent, I find that under the written tenancy agreement, there is no term that prohibits the tenant from sharing the unit and the tenant is therefore at liberty to do so. However, under the Act the tenant would assume all responsibility for any damages, conduct issues or violations perpetrated by a room-mate or even by a visitor.

I find that, if the landlord intended to restrict the number of occupants or intended that the tenant must get the landlord’s consent prior to adding any additional residents, there must be a specific term in the tenancy agreement stating this restriction or requirement. Apparently the agreement does not contain such a term.

There is also no provision in the Act that would impose a restriction on tenant allowing additional occupants, unless the number created a health violation under section 32 of the Act. Without a clear term in the tenancy prohibiting the tenant’s actions and nothing in the Act that disallows additional occupants in a rental suite, I find that there was could not possibly be a violation of the agreement or the Act, upon which to base the Notice for Cause nor to justify ending the tenancy under section 47.

Once an agreement is made, the Act does not permit a landlord or a tenant to unilaterally impose additional terms or changes to an agreement. Section 14 of the Act states that standard terms in a tenancy agreement cannot be changed at all and that a tenancy agreement may be amended to add, remove or change a term, other than a standard term, **only** if both the landlord and tenant both agree

to the amendment. I find that, unless a change in the tenancy agreement was mutually agreed to in writing and signed by both the landlord and the tenant then no newly introduced terms would be enforced.

In this instance, it appears that the landlord's was seeking to end the tenancy on an alleged violation of a term of the agreement that did not exist.

In any case, I find that the landlord's Notice was not supported by any substantive proof that the tenant had engaged in illegal activity that had or was likely to adversely affect the quiet enjoyment, safety, security or physical well-being of the landlord or another occupant. I also find that the tenant had never assigned or sublet the rental unit/site without the landlord's written consent. In addition, if the landlord's objection was that the tenant allowed another occupant to share the suite without permission, I find that this action would not be in violation of the tenancy agreement nor the Act.

I note that the tenant indicated that she does not have a roommate at present and that she will not seek another occupant to share the unit in the future.

Based on the evidence and the testimony above, I find that the One-Month Notice to End Tenancy for Cause dated March 31, 2010, was not supported by sufficient proof to merit its enforcement. For that reason, I find that the tenant's application requesting that the Notice be cancelled will be granted.

Conclusion

I hereby order that the landlord's One-Month Notice to End Tenancy for Cause dated March 31, 2010 be permanently cancelled and of no force nor effect.

April 2010

Date of Decision

Dispute Resolution Officer