



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes CNC, FF

Introduction

This hearing dealt with the Tenant's Application for Dispute Resolution to cancel a 1 Month Notice to End Tenancy for Cause.

The parties appeared, gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions to me.

Issue(s) to be Decided

Is the Tenant entitled to an Order cancelling the 1 Month Notice to End Tenancy for Cause?

Background and Evidence

This tenancy started on July 1, 2000, as a fixed term tenancy and continues now on a month to month basis. Monthly rent is \$998.00, payable on the 1st day of each month, and a security deposit in the amount of \$400.00 was paid on June 9, 2000.

Pursuant to the rules of procedure for the Act, the Landlord proceeded first in the hearing and testified as to why the Tenant had been served a 1 Month Notice to End Tenancy

The Landlord issued the 1 Month Notice to End Tenancy for Cause (the "Notice") to the Tenant on October 8, 2010, with a stated effective date of November 15, 2010. Under the Act, a notice under this Section must end the tenancy effective on a date that is not earlier than one month after the date the notice is received, and the day before the day in the month that rent is payable under the tenancy agreement. Thus I note the effective date indicated on the Notice is ineffective and automatically corrects under the Act to November 30, 2010. I further note that the Tenant filed her application for dispute resolution within the time in accordance with the Act.

The cause as stated by the Landlord indicated that the Tenant assigned or sublet the rental unit without the Landlord's written consent.

The Landlord testified that she issued the Notice as she became aware that a person unknown to her was seen coming in and out of the rental unit. When she approached the person, he informed her that he was living there, which surprised the Landlord. The Landlord further testified that it was not her custom to rent to people she did not know and that as owner of the building, she decides to whom she will rent.

The Landlord acknowledged that the Tenant still resides in the rental unit. The Landlord testified that she saw the ad placed in the local newspaper by the Tenant, as the ad doesn't mention a roommate, but shared accommodation, she believed the Tenant was assigning or subletting.

When queried, the Landlord could not direct me to the section in the tenancy agreement restricting the Tenant from having a roommate.

The Landlord provided a copy of the Notice and tenancy agreement, a copy of the ad and a timeline of events.

The Tenant testified that she ran the ad to find a roommate to help share expenses only and that she was still fully responsible under the tenancy agreement. The Tenant further stated that when the tenancy began, she had two teenage children, who are now gone, so she believed an additional person would be permissible.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

The 1 Month Notice to End Tenancy was issued due to the allegation that the Tenant had wrongfully assigned or sublet the rental unit.

Section 34 of the Act prohibits a tenant from assigning or subletting a rental unit without the landlord's written consent. Where a tenant violates section 34, the landlord may end the tenancy under section 47(1)(i) of the Act. The Landlord is of the position the Tenant has breached section 34 of the Act and issued a Notice to End Tenancy under section 47 of the Act. The burden to prove the Tenant has breached the Act is that of the Landlord. I have considered whether renting out rooms in a rental unit meets the definition of subletting.

Residential Tenancy Policy Guideline 19 provides for the policy intent of the legislation and has been developed in the context of common law and the rules of statutory interpretation to assist parties to understand the issues related to residential tenancies. The policy guideline provides that a sublease (also referred to as a sublet) conveys substantially the same interest in the land as is held by the original lessee, however such a sublease must be for a shorter period of time than the original lease so that the original lessee retains a reversionary interest in the property.

I find that the Tenant's occupant does not enjoy the same interest in the land that is held by the Tenant. Rather, the occupant's interest in land is limited to possession of a bedroom, shared access to common living areas and restricted access to other areas; whereas, the Tenant's right to the land, under the tenancy agreement, consists of the right to possess the entire rental unit.

Based upon the above findings and analysis, I do not find the Tenant is subleasing or subletting the rental unit since the Tenant continues to be an occupant of the rental unit and has not conveyed an interest in the rental unit to another party that is the same as her interest. The Tenant is the person responsible under the tenancy agreement. Therefore, the Landlord has not established that the Tenant has violated section 34 of the Act.

Based on these findings, I find that the 1 Month Notice to End Tenancy issued in this matter is not valid and I order it to be cancelled. The Notice is of no force or effect and the tenancy will continue until ended in accordance with the Act.

I find it necessary to caution the Landlord that Section 28 of the *Act* deals with the Tenant's right to quiet enjoyment, meaning reasonable privacy, freedom from unreasonable disturbance and *exclusive possession* of the rental unit. The Tenant has done nothing wrong under the Act or tenancy agreement and is entitled to the exclusive possession, free from interference.

Lastly, because the Tenant was successful in her Application, I allow the Tenant the **\$50.00** filing fee for the Application, and allow her to deduct this amount from the December, 2010, rental payment.

Conclusion

The Landlord's 1 Month Notice to end Tenancy is not valid and not supported by the evidence and the Tenant is granted an order dismissing the Notice to End Tenancy.

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: November 09, 2010.

Dispute Resolution Officer