

DECISION

Dispute Codes CNC

Introduction

This hearing dealt with the tenant's application pursuant to section 47 of the *Residential Tenancy Act* (the *Act*) to cancel the landlord's One Month Notice to End Tenancy for Cause.

Both parties attended the hearing and were given a full opportunity to be heard, to present evidence and to make submissions. The landlord testified that the notice to end tenancy was posted on the tenant's door on October 26, 2010. The tenant testified that he handed a representative of the landlord a copy of his application for dispute resolution on November 5, 2010. Both parties confirmed receiving these documents. I am satisfied that the parties served these documents and their evidence in accordance with the *Act*.

At the hearing, the landlord made an oral request for an Order of Possession should I dismiss the tenant's application for cancellation of the landlord's notice to end tenancy.

Issues(s) to be Decided

Is the tenant entitled to a cancellation of the landlord's notice to end tenancy for cause?
Is the landlord entitled to an Order of Possession?

Background and Evidence

This periodic tenancy commenced on January 1, 2000. Monthly rent is currently set at \$409.00. No security deposit was paid for this tenancy.

The landlord's Property Portfolio Manager who represented the landlord in this hearing (the landlord) maintained that the tenant had let a female friend stay with him as an occupant of his rental unit contrary to the terms of his residential tenancy agreement and the stated wishes of the landlord's property management officials. The landlord

provided a copy of the residential tenancy agreement, noting that section 13 of that agreement prevents the tenant from letting anyone else occupy or sublet the rental unit without first obtaining the landlord's written consent. The landlord also submitted into written evidence a copy of a Ministry of Housing and Social Development (the Ministry) Shelter Information form signed by the tenant on September 21, 2010. The tenant signed this form as the landlord/property manager/agent in an apparent effort to assist his female friend in obtaining a shelter allowance from that Ministry.

In an October 26, 2010 letter, the landlord confirmed that there had been discussions on October 19, 2010 regarding the tenant's female friend who had been staying with him since the beginning of October. At the hearing, the landlord confirmed that she had given the tenant oral permission to let the tenant's female friend remain in the rental unit as a guest until the end of October 2010. In her October 26, 2010 letter, the landlord wrote as follows:

...The understanding during our meeting was only to allow the Ministry to mail Ms. H's cheque to your address. At no time did we discuss or agree that an Intent to Rent would be completed or that she would in any way be considered a tenant.

The landlord noted in her letter that the tenant's actions "are a serious concern to BC Housing." She asserted that the tenant had "submitted false information to the Ministry of Housing and Social Development as well as claiming to be the property manager." At the hearing, the landlord said that she issued the notice to end tenancy for cause because of the tenant's involvement in an act of fraud against the Ministry and the written confirmation that the tenant was apparently intending to prolong his female friend's stay in his rental unit as another tenant.

The tenant testified at the hearing that he had limited reading skills and education. He also has poor eyesight, compounded by a lack of adequate reading glasses. He said that he did not read the Shelter Information document, but trusted his female friend's assurance that it was only being used to obtain some funds to assist her with her shelter

needs. He said that he had no intention to fraudulently maintain that he worked for the landlord nor did he anticipate his friend staying with him beyond the end of October 2010, as discussed with the landlord's representative. The tenant's legal advisor noted that the tenant is 68 years old and would have great difficulty finding suitable accommodations. The parties agreed that the tenant has had a good tenancy record in recent years and did come forward to speak with the landlord's representative to seek permission to let his female friend stay with him until the end of October.

Analysis

The landlord has issued the one month notice to end tenancy for cause citing section 47(1)(i) of the *Act* because:

- (i) *the tenant purports to assign the tenancy agreement or sublet the rental unit without first obtaining the landlord's written consent as required by section 34 (assignment and subletting); ...*

When a landlord issues such a notice and the tenant disputes the notice the onus is on the landlord to prove cause for issuing the notice.

I accept as credible the tenant's oral testimony that he was not aware that he was signing the Shelter Information form as the landlord or the landlord's agent. His actions in discussing this with the landlord and obtaining oral permission to let his female friend stay with him until the end of October 2010 seems consistent with his oral testimony. The landlord agreed that the tenant's friend does appear to have left the tenant's rental unit by the end of October as per the tenant's commitment to the landlord. I do not believe that the tenant was intending to sublet his premises to his female friend, despite the document presented into evidence by the landlord. The Shelter Information form clearly states the following:

...This form is for Ministry of Housing and Social Development information only and does NOT constitute a tenancy agreement under the Residential Tenancy Act...

(emphasis in original)

Although there is a Rent Receipt portion of this form, this section of the form was not completed by either the tenant or his female friend. The tenant testified that he received no rental payment from his female friend.

The tenant presented as genuinely apologetic and contrite, promising to never sign such a document again. I accept his testimony that he now understands the potential jeopardy he has placed himself in by attempting to do a favour for a friend who was seeking his help.

Overall, I find there was insufficient evidence from the landlord to allow me to find that the tenant truly intended to assign or sublet his rental unit to someone else without obtaining the landlord's written permission. As the landlord has provided insufficient evidence to justify the notice to end tenancy for cause, I cancel the landlord's October 26, 2010 notice with the effect that this tenancy continues. Since the tenancy is continuing, I am not issuing an Order of Possession to the landlord.

Conclusion

The tenant's application is allowed. The Notice to End Tenancy for Cause is set aside with the effect that this tenancy shall 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*.