



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPC, FF

Introduction

This hearing dealt with the Landlord's Application for Dispute Resolution, seeking an order of possession based on cause and to recover the filing fee for the Application.

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

The Landlord testified she served the Notice of Hearing and her Application on the Tenants and on an Occupant at the rental unit by sending these documents by registered mail. She sent the registered mail to one of the Tenants on December 9, 2011, and to the other Tenant and the Occupant on December 10, 2011. Despite this, neither Tenants or the Occupant appeared at the hearing. The Landlord testified that some of the registered mail was not accepted and was returned to her. I note that refusal or neglect to accept registered mail is not a ground for Review under the Act. Therefore, I find that the Tenants and the Occupant have been duly served in accordance with the Act.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

Is the Landlord entitled to an order of possession for the rental unit?

Background and Evidence

On September 23, 2006, the parties signed a standard form residential tenancy agreement, for a tenancy to start on October 1, 2006. The rate of rent for the rental unit was set at \$800.00 per month and the Landlord was paid a security deposit of \$400.00 on September 23, 2006.

The tenancy agreement contained a term that the Tenants could assign or sublet the rental unit with the written consent of the Landlord.

According to the testimony of the Landlord, one of the two Tenants left the rental unit a few years ago, and she had no contact with this Tenant ("J.M.") from or about April of 2008, until recently, when certain issues arose regarding the tenancy.

In October of 2011, the Landlord emailed the Tenants to inform them that she was listing the house for sale and would be attending the rental unit in November. The Tenant ("Y.H.") replied in an email that Tenant J.M. had left the rental unit sometime ago and that the Tenant Y.H. was travelling and he had sublet the rental unit to a third party (the "Occupant").

The Landlord testified she had not given her written permission to either Tenant to sublet the rental unit.

The Landlord testified she attempted to sort out the situation with Tenant Y.H. and had also suggested to the Occupant that they enter into a short term lease. The Occupant initially did not want to enter a tenancy agreement with the Landlord and then attempted to negotiate a lower rate of rent which the Landlord did not accept. The Occupant also believed he had established a month to month tenancy with the Landlord. The Landlord clarified to the Occupant that they had never had any agreement regarding the tenancy.

The Occupant emailed the Landlord and explained he was under the impression the tenancy should be ending due to the listing of the property for sale and the Tenants and the Occupant were entitled to a two month Notice to End Tenancy with one month of free rent.

The Landlord also testified that the Occupant had made a rent payment to her through an email transfer of funds, and the Landlord sent the Occupant an email explaining this did not imply a tenancy agreement with the Occupant.

On November 10, 2011, the Landlord served the Tenants by mail, with a one month Notice to End Tenancy for cause. The Landlord lists several reasons for ending the tenancy, including but not limited to, the Tenants have assigned or sublet the rental unit without the Landlord's written consent. The effective date of the Notice is indicated as December 15, 2011.

Analysis

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

I find that the Tenants have breached section 34 of the Act and clause 9 of the tenancy agreement by subletting or assigning the rental unit without the written consent of the Landlord.

I find that the Landlord did not establish a tenancy with the Occupant. The Occupant has no standing under the Act, as they are not a tenant. The Occupant has no right under the Act to possess the rental unit and must vacate under the order of possession. The *Residential Tenancy Policy Guideline Manual*, section 13, provides the following on this circumstance:

Occupants

Where a tenant allows a person who is not a tenant to move into the premises and share the rent, the new occupant has no rights or obligations under the tenancy agreement, unless all parties agree to enter into a tenancy agreement to include the new occupant as a tenant.

For greater certainty to the parties, I further find that neither the Tenants nor the Occupant are entitled to a two month Notice to End Tenancy with one month of free rent. As explained herein, the tenancy is ending due to a breach of the Act and the tenancy agreement by the Tenants, and the Occupant has no right to possess the rental unit.

I find that the one month Notice to End Tenancy is valid, with the exception of the incorrect effective date, as described below.

I further find that the Tenants failed to make an Application to dispute the Notice to End Tenancy and therefore, under section 47(5) of the Act the Tenants are conclusively presumed to have accepted the tenancy ended on the effective date of the Notice to End Tenancy and must vacate the rental unit by the effective date.

I note that the one month Notice to End Tenancy had an incorrect effective date of December 15, 2011, and under section 53 of the Act this automatically corrects to December 31, 2011.

Therefore, I grant and issue the Landlord an order of possession for the rental unit effective at **1:00 p.m. on December 31, 2011.**

As the Landlord has been successful she may retain **\$50.00** from the security deposit paid to recover the filing fee for the Application.

This decision is final and binding on the parties, except as otherwise provided under the Act, and 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: December 22, 2011.

Residential Tenancy Branch