



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC

Introduction

This hearing dealt with an Application for Dispute Resolution by the tenants to cancel a one month notice to end tenancy for cause issued on June 10, 2012.

Both parties appeared, gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions at the hearing.

In a case where a tenant has applied to cancel a notice for cause Residential Tenancy Branch Rules of Procedure require the landlord to provide their evidence submission first, as the landlord has the burden of proving cause sufficient to terminate the tenancy for the reasons given on the notice.

I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure. I refer only to the relevant facts and issues in this decision.

Issue(s) to be Decided

Should the notice to end tenancy issued on June 10, 2012, be cancelled?

Background and Evidence

In this case, the landlord has entered into two separate written tenancy agreements. One tenancy agreement relates to the upper rental unit of the subject property and the second tenancy agreement relates to the lower rental unit of the subject property.

The parties agreed that a one month notice to end tenancy for cause was served on the tenants indicating that the tenants are required to vacate the upper and lower rental unit on July 31, 2012.

The reason stated in the notice to end tenancy was that the tenant has:

- Assigned or sublet the rental unit

The landlord testified the tenants have hired a nanny and the nanny is living in the upper rental unit with the tenants. The landlord stated the tenants have also sublet the

lower rental unit after they were told they were not allowed to sublet the rental unit. The landlords request an order of possession for both upper and lower rental unit.

The tenant testified that they have sublet the lower rental unit and do not dispute the notice to end tenancy regarding the lower rental unit. However, the tenant disputes that they are in violation of the written tenancy agreement regarding the upper rental unit. The tenant stated they have not sublet or assigned the upper rental unit to any other party and are currently living in the rental unit with their family and the nanny who pays them rent for her room.

Analysis

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

After considering all of the written and oral submissions submitted at this hearing, I find that the landlord has provided sufficient evidence to show that the tenants have assigned or sublet the lower rental unit, contrary to the terms of the written tenancy agreement. Therefore, I find the notice was issued for the reasons stated in the notice regarding the lower rental unit. The tenancy in the lower rental unit will end in accordance with the Act.

However, the upper rental unit is under a separate written tenancy agreement and there is no evidence to support that the tenants have violated the terms of the tenancy agreement relating to the upper rental unit. There is no term in the tenancy agreement which prohibits the tenants from having additional occupants reside in the rental unit. I find having a nanny resides in the rental unit that is occupied by the tenants does not constitute subletting, even if the nanny is paying rent for her room. The nanny would be considered an occupant under the Act.

An occupant is defined in the *Residential Tenancy Policy Guideline Manual*, section 13 as follows: 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 original tenancy agreement, unless all parties (owner/agent, tenant, occupant) agree to enter into a tenancy agreement to include the new occupant as a tenant.

Therefore, I find the landlord has not proven the notice was issued for the reasons stated in the notice regarding the upper rental unit. As a result, the tenancy will continue with the tenants under the terms of the written tenancy agreement for the upper rental unit until legally ended in accordance with the Act.

The landlord has requested an order of possession at the hearing for both rental units, pursuant to section 55 of the Act, I must grant this request if the notice to end tenancy is upheld.

Section 55(1) of the Act states: Order of possession for the landlord

55 (1) If a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, the director must grant an order of possession of the rental unit to the landlord if, at the time scheduled for the hearing,

- (a) the landlord makes an oral request for an order of possession, and
- (b) the director dismisses the tenant's application or upholds the landlord's notice.

I find that the landlords are entitled to an order of possession effective **July 31, 2012 at 1:00 P.M for the lower rental unit** as the notice was upheld for this rental unit. This order must be served on the tenant and may be filed in the Supreme Court.

I find the landlords are not entitled to an order of possession for the upper rental unit as the notice was not upheld for this rental unit. Therefore, the landlord's request for an order of possession for the upper rental unit is dismissed.

Conclusion

The tenants' application to cancel a one month notice to end tenancy for cause issued on June 10, 2012, is dismissed regarding the lower rental unit. The landlords are granted an order of possession for the lower rental unit.

The tenants' application to cancel a one month notice to end tenancy for cause issued on June 10, 2012, is granted regarding the upper rental unit. The tenancy will continue until legally ended in accordance with the Act.

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: July 17, 2012.

Residential Tenancy Branch