



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

OPC, FF

Introduction

This Application for Dispute Resolution by the tenant was seeking to cancel a One-Month Notice to End Tenancy for Cause dated May 14, 2013, a copy of which was submitted into evidence. The Notice indicated that the reasons for terminating the tenancy were that the tenant had seriously jeopardized the health or safety or lawful right of another occupant or the landlord, and engaged in illegal activity that is, or is likely to, adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant or the landlord and that the tenant has assigned or sublet the rental unit without the landlord's permission.

Both parties were present at the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained. The participants had an opportunity to submit documentary evidence prior to this hearing, and the evidence has been reviewed. The parties were also permitted to present affirmed oral testimony and to make submissions during the hearing. I have considered all of the affirmed testimony and relevant evidence that was properly served.

Issue(s) to be Decided

Should the One Month Notice to End Tenancy for Cause be cancelled?

Background and Evidence

The burden of proof is on the landlord to justify the Notice.

The tenancy began on June 15, 2011 and the rent is \$1,550.00. The rental unit is a single family dwelling and the tenant is the only legal tenant on the tenancy agreement, since the tenant's mother, who was a cotenant, passed away in March 2013. During the period of time while the co-tenant was ill prior to her death, family members came from out-of-province staying in the home as guests of the tenant, to care and support the elderly co-tenant during her final days. These family members are apparently still residing temporarily in the home as guests.

The landlord testified that he considers this situation to be an illegal sublet or assignment, because it was done without the landlord's permission. The landlord's position is that this is a valid basis to terminate the tenancy.

In addition, the landlord is alleging that the tenant had seriously jeopardized the health or safety or lawful right and engaged in illegal activity affecting the quiet enjoyment , security , safety or physical well-being of another occupant or the landlord. The landlord testified that this relates to the fact that the tenant was convicted of a crime for which he is currently incarcerated. The landlord testified that the offense resulted in the tenant being charged with molesting one of the tenant's relatives.

The landlord testified that the tenancy agreement was affected in that the nature of the offense caused the landlord and others significant disturbance. When asked what the tenant is specifically doing to endanger or disturb the other occupants or the landlord, the landlord stated that he lives next door and is bothered seeing kids go into the home.

With respect to the allegation that the tenant has sublet or assigned the rental unit, the tenant's representative argued that there is no sublet agreement nor an assignment agreement. According to the tenant's representative, their family has remained in the home as guests of the tenant, to ensure security and maintenance while the tenant is incarcerated. The tenant's representative stated that they are intending to vacate the unit in the near future and they are hopeful that the tenant will return to reside in the rental unit within 3 months.

With respect to the landlord's position that the tenant is "seriously jeopardizing the health or safety or lawful right of others and engaging in illegal activity adversely affecting the quiet enjoyment , security , safety or physical well-being of another occupant or the landlord", the tenant's representative stated the crime committed is not relevant to the tenancy contract. The tenant's representative pointed out the, in fact, the tenant is not even staying in the rental unit at the present time, although he has not given up his tenancy.

The tenant's representative stated that the tenant is of the opinion that the One Month Notice to End Tenancy for Cause has no merit and should be cancelled.

The landlord reiterated his testimony and evidence again and made a formal request for an Order of Possession.

The landlord's evidence also included photos of the yard at the rental unit, showing overgrown lawns and some rubbish. The condition of the yard was never submitted as part of the landlord's application, but is evidently the source of some aggravation between the parties. A mediated discussion was held on this matter and the landlord agreed to remove some boards that he had discarded in the tenant's area. The tenant's

representative agreed to remove the remainder of the rubbish and to cut the overgrown lawn.

Analysis

I find that, according to the terms of the tenancy agreement, the fixed term tenancy converted to a month-to-month tenancy as of June 15, 2013.

Assigning or Subletting

With respect to the landlord's allegation that the tenant had sublet or assigned the rental unit, I find that the Residential Tenancy Guideline offers some helpful definitions.

An assignment is the act of transferring all or part of a tenant's interest in, or rights under, a lease or tenancy agreement to a third party, who becomes the tenant of the original landlord. The assignee takes on all obligations of the original tenant commencing at the time of the assignment, but is not responsible for actions or failure of the original tenant to act prior to the assignment.

A sublease is a lease given by the tenant or lessee of residential premises to a third person (the sub-tenant or sub-lessee). A sublease can convey substantially the same interest in the land as is held by the original lessee. However such a sublease must be for a shorter period than the original lease in order that the original lessee can retain a reversionary interest in the property. The sub-tenant does not take on any rights or obligations of the original tenancy agreement that are not contained in the sub-agreement.

Where an individual agrees to sublet a tenancy for the full period of the tenancy, and does not reserve the last day or some period of time at the end of the sublease, the agreement amounts in law to an assignment of the tenancy and will be treated as such.

In this instance I find that the persons who are occupying the home are merely guests of the tenant at his invitation. They are merely occupants and do not have any of the tenancy rights or responsibilities reserved to the existing tenant. I find that the tenancy agreement does not impose any restrictions regarding who the tenant decides may reside in the unit nor does the agreement have a term that requires any new occupants to be added to the tenancy agreement as co-tenants and approved by the landlord.

I find that under section 30 (1) of the Act, a landlord is not allowed to unreasonably restrict access to residential property by:

- (a) the tenant of a rental unit that is part of the residential property, or
- (b) a person permitted on the residential property by that tenant.

Section 28 of the Act also protects a tenant's right to quiet enjoyment and states that a tenant is entitled to quiet enjoyment including, but not limited to, rights to the following:

- (a) reasonable privacy;
- (b) freedom from unreasonable disturbance;
- (c) exclusive possession of the rental unit subject only to the landlord's right to enter the rental unit in accordance with section 29 [*landlord's right to enter rental unit restricted*];
- (d) use of common areas for reasonable and lawful purposes, free from significant interference.

Given the above, I find that the landlord does not have any statutory nor contractual right to restrict the tenant's guests. That being said, the tenant himself is totally responsible for any violations of the Act or agreement perpetrated by the people he allows to occupy his home. The tenant, alone, will bear the consequences of transgressions that occur, due to his visitors whether he is present at, or absent from, the rental premises.

I find that the tenant is free to manage his home as he sees fit and utilize the rental property for any purpose he desires, unless specifically limited or prohibited by the law, the Residential Tenancy Act or the terms of the tenancy agreement.

Accordingly I find that the tenant has acted within his rights to invite guests and has not sublet nor assigned his tenancy to any third parties.

Jeopardize Health Safety and Lawful Rights

In regard to the cause put forth warranting termination of the tenancy under section 47(1)(d)(ii) and 47(e)(ii), of the Act, I find that the landlord must prove that the tenant or associates of the tenant had seriously jeopardized the health or safety or lawful right of another occupant or the landlord, and engaged in illegal activity that is, or is likely to, adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant or the landlord.

I find that the tenant's arrest and incarceration understandably caused the landlord, who is also a neighbour, some significant concerns. However, I find that this does not sufficiently meet the threshold to qualify as a valid basis for terminating the tenancy. I find that, although illegal and repugnant, the illegal

conduct in question did not directly affect the tenancy contract between this landlord and tenant. I find that insufficient evidence was submitted to prove that either the landlord or other renters' safety and security or lawful rights have been seriously jeopardized. I find that the tenant has not contravened the Act by disturbing others.

Based on the evidence, I find that the One-Month Notice to End Tenancy for Cause is not adequately supported by evidence that would permit enforcement under the Act. I find that the landlord has not met their burden of proof that the tenancy must be terminated under the Act and the Notice must therefore be cancelled.

I hereby order that the One Month Notice to End Tenancy for Cause dated May 14, 2013 is cancelled and of no force nor effect.

I find that the tenant is entitled to be reimbursed the \$50.00 cost of the application and I order that the tenant deduct this amount from the next rental payment to the landlord as a one-time abatement.

Conclusion

The tenant is successful in the application and the One-Month Notice to End Tenancy for Cause is cancelled.

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 02, 2013

Residential Tenancy Branch