



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPC, CNC, LA, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the tenant to cancel a 1 month notice to end tenancy for cause issued on August 15, 2013.

This hearing was convened in response to applications by the landlord and the tenant.

The landlord's application is seeking orders as follows:

1. For an order of possession.

The tenant's application is seeking orders as follows:

1. To cancel an a one month notice to end tenancy; and
2. To recover the cost of filing the application.

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 August 15, 2013, be cancelled?
Is the landlord entitled to an order of possession?

Background and Evidence

The tenancy began on November 1, 2003.

The parties agree that a one month notice to end tenancy for cause was served on the tenant indicating that the tenant is required to vacate the rental unit on September 30, 2013.

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

- Breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.
- Tenant has assigned or sublet the rental unit without landlord's written consent.

The landlord testified that the tenant has violated a material term of her tenancy as she is to be the only person occupying the rental unit. The landlord stated that the tenant has sublet rooms. The landlord stated that the tenant has lived in the rental unit for ten years and that he only became aware of her subletting rooms in the last two years ago. The landlord stated that the tenant received a written warning on July 29, 2013, and have failed correct the situation of subletting. Filed in evidence is a copy of the application for tenancy signed by the parties on October 20, 2003. Filed in evidence is a copy of the warning letter dated July 20, 2013.

The tenant testified that she has not sublet the rental unit as she lives in the unit with her roommates. The tenant stated that the property manager has always known that she has had roommates since the beginning of the tenancy in 2003. The tenant stated it is a three bedroom basement suit and her roommates help her pay the rent.

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 failed to prove that the tenant has:

- Breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.
- Tenant has assigned or sublet the rental unit without landlord's written consent.

In this case, the notice was issued alleging the tenant has breached a material term of a tenancy agreement. However, a written tenancy was not entered into by the parties. A material term is a written term that the parties both agreed at the start of the tenancy that is so important that the most trivial of breach would give the other party the right to

end the tenancy. I find the landlord has failed to prove the tenant breach a material term of the tenancy agreement.

The notice also stated that the tenant has assigned or sublet the rental unit without landlord's written consent. The evidence of the landlord was that he only became aware of the issue of the tenant subletting two years ago. The evidence of the landlord was that the application for tenancy signed by the tenant indicated that the tenant is to be the only person residing in the unit. The evidence of the tenant was that she had lived in the rental unit for ten years and has had roommates since the start of the tenancy which commenced in 2003. The evidence of the tenant was the landlord was aware in 2003 that she intended to have roommates.

Under the Act, a sublease is a lease give by the tenant of the residential premises to a third party. In this situation the tenant has not vacated the residential premises and has roommates which help her pay the rent.

While the landlord claimed that the application for tenancy signed by the tenant on October 20, 2003, only allows her to occupy the residential premises, I find upon my review of that application for tenancy, that the tenancy allowed a total number of three people be part of this tenancy arrangement.

I accept the tenant's version that the landlord has always been aware that the tenant intended to have roommates as there would be no other reasonable reason to indicate the total number of all persons in this tenancy will be 3. Further, I also find that even if this application did not indicate the number of persons allowed to reside in the unit. The tenant had the right to rely on the past actions of the landlords which allowed her to have roommates. As a result, I find the landlord has failed to prove the tenant has subleased the rental unit.

Therefore, I grant the tenant's application to cancel the one month notice to end tenancy issued on August 15, 2013. The tenancy will continue until legally ended in accordance with the Act.

As the tenant has been successful with their application, the tenant is entitled to recover the cost of filing their application for the landlord. I authorize the tenant to deduct one time the sum of \$50.00 from a future month rent payable in full satisfaction of this award.

The landlord's application for an order of possession is dismissed.

Conclusion

The tenant's application to cancel a one month notice to end tenancy for cause issued on August 15, 2013, is granted.

The tenant is entitled to recover the cost of filing their application for the landlord and is authorized a onetime rent reduction of \$50.00 from a future rent payable to the landlord.

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: October 07, 2013

Residential Tenancy Branch

