



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, CNR, AS

Introduction

This hearing dealt with the tenant's Application for Dispute Resolution to cancel a notice to end tenancy for cause and to allow the tenant to sublet the rental unit.

The hearing was conducted via teleconference and was attended by the tenant; the landlord; and her translator/agent.

At the outset of the hearing the tenant indicated that in addition to the 1 Month Notice to End Tenancy for Cause that gave rise to her Application for Dispute Resolution, the landlord has issued her a 10 Day Notice to End Tenancy for Unpaid Rent on August 27, 2014.

The tenant sought to amend her Application for Dispute Resolution to include the 10 Day Notice. The landlord had no objection to this amendment. As such, I amend the tenant's Application to include seeking to cancel a 10 Day Notice to End Tenancy for Unpaid Rent.

During the hearing, the landlord did not verbally request an order of possession should the tenant be unsuccessful in her Application.

Prior to closing the hearing I instructed both parties that the tenant was to take no action in relation to the 10 Day Notice until such time as they received my decision.

Issue(s) to be Decided

The issues to be decided are whether the tenant is entitled to an order of allowing her to assign or sublet her rental unit; to cancel a 1 Month Notice to End Tenancy for Cause; and to cancel a 10 Day Notice to End Tenancy for Unpaid Rent, pursuant to Sections 34, 46, and 47 of the *Residential Tenancy Act (Act)*.

Background and Evidence

The parties agree the tenancy began in February 2013 as a 1 year fixed term tenancy that converted to a month to month tenancy on February 1, 2014. The monthly rent

began at \$2,300.00 per month due on the 1st of each month and has been increased to \$2,360.00. A security deposit of \$1,150.00 was paid.

The tenant submitted into evidence the following relevant documents:

- A copy of a 1 Month Notice to End Tenancy for Cause issued by the landlord on July 31, 2014 with an effective vacancy date of August 31, 2014 citing the tenant has assigned or sublet the rental unit/site without landlord's written consent.
- A copy of a letter from the landlord dated July 31, 2014 that was attached to the Notice stating, among other things, that the landlord is would be looking to rent the rental unit and would potentially rent it to the tenant if she understood and took seriously her obligations as a tenant and at a much higher rental rent (from the current \$2,360.00 to \$3,000.00).

The parties agree the notice was issued in response to the tenant subletting the unit for the month of July 2014 without permission of the landlord while the tenant was away. The tenant acknowledges that she did sublet the unit at that time and that she did so because the landlord had been aware that the downstairs tenant had done the same thing for a couple of months. The landlord testified that she had not been aware that the basement tenant or this tenant had ever sublet the rental unit.

The tenant submits that while she was still away the landlord found out about the sublet and in order to maintain the tenancy the tenant's family contacted the landlord and agreed to pay outstanding rental arrears in the amount of \$1,800.00 for the basement unit and to have the unit cleaned in exchange for the landlord not ending the upstairs tenancy. The tenant submits that the cleaning cost \$1,000.00 – no receipts were provided as evidence.

The basement unit had been rented to a friend and the nanny for the upstairs tenant. That tenant had, at the end of June 2014, moved out of the basement unit without providing the landlord any notice and left the unit uncleaned. The parties agree that the tenant from the upstairs unit also was named as a tenant along with the former occupant of the unit in the tenancy agreement for the basement unit.

The tenant submits that despite the agreement the landlord still issued the 1 Month Notice to End Tenancy.

The tenant also submits that on August 27, 2014 she received a 10 Day Notice to End Tenancy from the landlord with an effective vacancy date of September 27, 2014 due to \$2,350.00 in unpaid rent.

The tenant testified that the landlord had made an arrangement with the occupant tenant of the basement unit that once she sold her Jeep she would pay the landlord the outstanding rent. The landlord disputes making any such agreement and states that she has no contact information for the former basement tenant.

The tenant submits that she should not have to pay rent for the upstairs unit, because she in fact she not have had to have paid the rent for the basement unit since the landlord had an agreement with the other tenant.

The tenant also seeks authourity to sublet her rental unit. The tenant did not appear to seek to sublet the unit at this time but either for the period of July 2014 or some future sublet.

Analysis

Section 34(1) of the *Act* stipulates that unless the landlord consents in writing, a tenant must not assign a tenancy agreement or sublet a rental unit. As the landlord has the right to know who is residing in the rental unit during a tenancy I find it would be unfair to grant the tenant a retroactive or a future approval to allow her to sublet the unit. As such, I dismiss this portion of her Application.

However, I note that should the tenant ever seek to sublet the rental unit during the tenancy the tenant must request written permission from the landlord and if she fails to do so the landlord may consider such action as a cause to end the tenancy.

As to the 1 Month Notice to End Tenancy for Cause, while I accept, from her own testimony, the tenant did not have approval to sublet the unit as is required under Section 34(1) of the *Act* I also find the landlord had an ulterior motive to ending the tenancy.

As evidence by the letter written to the tenant attached to the 1 Month Notice, I find the landlord did not take the breach of Section 34(1) seriously enough to end the tenancy as she was willing to reinstate the tenancy if the tenant would pay a rent increase of 23% as opposed to the allowable 2.2% for 2014. Therefore, I find that the 1 Month Notice to End Tenancy for Cause issued on July 31, 2014 is invalid and of no force and effect.

In relation to the tenant seeking to cancel the 10 Day Notice to End Tenancy I find that despite any possible agreement the landlord may have had between the former occupant tenant of the basement unit both the former occupant tenant and the upstairs tenants were parties to the tenancy agreement in the basement unit.

Residential Tenancy Policy Guideline #13 defines co-tenants as two or more tenants who rent the same property under the same tenancy agreement. The guideline goes on to say that co-tenants are jointly and severally liable for any debts or damages relating to the tenancy.

As such, I find the landlord has the right to seek payment of outstanding arrears from either the former tenant occupant of the basement or the upstairs tenant who was named as a co-tenant on the tenancy agreement, despite any agreement that may or

may not have existed with the other tenant. As such, I find that the upstairs tenant cannot apply the payment she or her family has made to the landlord for the basement rental arrears to any rent for the upstairs unit.

Therefore, I find that on the day that the 10 Day Notice to End Tenancy for Unpaid Rent was issued by the landlord (August 27, 2014) the tenant did in fact owe the landlord rent for the upper rental unit and had no valid reason under the *Act* to withhold rent. As such, I find the 10 Day Notice to be a valid notice to end the tenancy.

However, as I had instructed both parties in the hearing that the tenant was to take no action on the 10 Day Notice to End Tenancy until she received my decision I find it would be unfair to not allow the tenant 5 days to pay the outstanding rent for the upstairs unit that she would have been allowed had the issue not been raised for this hearing.

Conclusion

As noted above, I order the 1 Month Notice to End Tenancy for Cause to be cancelled. In addition, I order the tenant must pay the landlord her outstanding arrears in full within 5 days of receipt of this decision or the tenancy will end and the tenant must vacate the rental unit.

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: August 29, 2014

Residential Tenancy Branch

