



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes FF, MNDC, OPC, CNC, MNDC, LAT & FF

Introduction

A hearing was conducted by conference call in the presence of both parties. On the basis of the solemnly affirmed evidence presented at that hearing, a decision has been reached. All of the evidence was carefully considered.

Both parties were given a full opportunity to present evidence and make submissions. Neither party requested an adjournment or a Summons to Testify. Prior to concluding the hearing both parties acknowledged they had presented all of the relevant evidence that they wished to present.

I find that the one month Notice to End Tenancy was personally served on the Tenant on June 30, 2014. Further I find that the Application for Dispute Resolution/Notice of Hearing filed by each party was sufficiently served by mailing, by registered mail to the other party.

Issue(s) to be Decided

The issues to be decided are as follows:

- a. Whether the tenant is entitled to an order cancelling the one month Notice to End Tenancy dated June 30, 2014?
- b. Whether the tenant is entitled to a monetary order and if so how much?
- c. Whether the tenant is entitled to an order authorized the tenant to change the locks?
- d. Whether the tenant is entitled to recover the cost of the filing fee?
- e. Whether the landlord is entitled to A Monetary Order and if so how much?
- f. Whether the landlord is entitled to an Order for Possession?

- g. Whether the landlord is entitled to recover the cost of the filing fee?

Background and Evidence

The parties entered into a written tenancy agreement that provided that the tenancy would start on July 1, 1994. The current rent is \$909 per month payable on the first day of each month. The tenant paid a security deposit of \$300 at the start of the tenancy.

Grounds for Termination:

The Notice to End Tenancy relies on the following grounds:

Landlord's notice: cause

47 (1) A landlord may end a tenancy by giving notice to end the tenancy if one or more of the following applies:

(d) the tenant or a person permitted on the residential property by the tenant has

(i) significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property,

...

(h) the tenant

(i) has failed to comply with a material term, and

(ii) has not corrected the situation within a reasonable time after the landlord gives written notice to do so;

...

(i) the tenant purports to assign the tenancy agreement or sublet the rental unit without first obtaining the landlord's written consent as required by section 34 [assignment and subletting];

Tenant's Application to Cancel the Notice to End Tenancy dated June 30, 2014:

The landlord seeks to end the tenancy based on the following:

- The landlord testified that in the afternoon of June 29, 2014 she received a noise complaint from another resident and came to investigate. The tenant had evicted her roommate and there was a lot of yelling between the tenant and her roommate. The landlord talked to a friend of the roommate who was being evicted and subsequently talked to the evicted roommate herself.
- The landlord testified that the tenant had been warned in the past about the problems with a roommate. She referred to a decision of an arbitrator dated January 24, 2014 where the arbitrator cautioned the tenant about permitting strangers to move into her apartment and the inherent risks as that "person's propensity to cause a disturbance is unknown to the tenant..."
- The landlord produced a short note from the Building Manager that states that when she/he returned home on June 30, 2014 there was a message that said that "a lady from the tenant's unit was moving out, loud voices, arguing, "she's at it again."
- The landlord produced a letter from the resident who made the complaint referred to above which states she heard her roommate express anger toward her and yell at her. She also heard the roommate talk about calling the police as the tenant was preventing her from removing her belongings. The letter further states that she also heard the resident about 3 – 4 months back arguing with what she believe to be a previous roommate. The landlord did not include the name of the person who wrote this letter on the material she gave to the tenant thus denying the tenant an opportunity to talk to this witness. This witness did not attend the hearing and thus was not cross examined.

The tenant acknowledges that she evicted a roommate at the end of June and the roommate vacated the rental unit on that date. However, she denies that the move out

was noisy. She further testified that she is one of the quietest tenant in the building and has not had any contact with the landlord for months.

Analysis:

Under the Residential Tenancy Act the tenant is responsible to the conduct of her roommates. Section 47(1)(d)(i) gives a landlord grounds to end a tenancy where the tenant or person permitted on the property by the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property. The Act requires that the conduct must “significantly interfered with” or be “unreasonably disturb” another occupant or the landlord. Occasional disturbances or normal activities are not sufficient. I determined after hearing all of the conflicting evidence that the landlord has failed to present sufficient evidence to establish cause to end the tenancy under section 47(1)(d)(i). The disturbance occurred in the late afternoon. There is insufficient evidence of other disturbances. The police were not called. While there were heated words between the tenant and her roommate I am not satisfied this disturbance was sufficient grounds to end the tenancy. The other tenant who complained to the landlord did not attend the hearing or give first hand evidence at the hearing. The landlord denied the tenant an opportunity to talk to this witness by taking her name off the letter. Even considering the letter and the landlord's testimony I am not satisfied the noise amounts to a significant interference or unreasonably interference.

The landlord relies on section 47(1)(i) of the Act which gives the landlord grounds to end the tenancy where the tenant purports to assign the tenancy agreement or sublet the rental unit without first obtaining the landlord's written consent as required by section 34 [assignment and subletting];

Policy Guideline #19 includes the following:

Assignment

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. In a manufactured home site tenancy, an assignment usually coincides with the sale of the manufactured home.

The assignee takes on the obligations of the original tenant commencing at the time of the assignment, and is not responsible for actions or failure of the assignor to act prior to the assignment. Unless the landlord agrees otherwise, the original tenant may retain some residual liability, in the event of a failure of the assignee to carry out the terms of the tenancy agreement or lease.

Subletting

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 subagreement, and the original lessee remains the tenant of the original lessor, and is the landlord of the sub-tenant.

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, and will be treated as, an assignment of the tenancy

The presence of a roommate is not an assignment or a sub-lease as the tenant remained in the rental unit and did not give up possession of the rental unit.

The landlord relies on section 47(1)(h) which provides that the landlord may end the tenancy where :

47(1)(h) the tenant

- (i) has failed to comply with a material term, and
- (ii) has not corrected the situation within a reasonable time after the landlord gives written notice to do so;

The landlord referred to the tenancy agreement which states that the Tenant Agrees :

- (a) Not to sublet or use the premises for any purpose than that intended."

I do not accept the landlord's submission that the tenant has breached a material term of the tenancy agreement by having a roommate. For the reason set out above I determined the presence of a roommate is not a sublet. Also, I determined that while the apartment was rented to the tenant over 20 years ago for use by her and her daughter, this does not violate the provision where the tenant agreed not to use the premise for any purpose than that intended. The premises at all material times have been used for the purpose of residential accommodation.

In summary I determined the landlord has failed to establish sufficient grounds to end the tenancy. **As a result I ordered that the Notice to End Tenancy dated June 28, 2014 be cancelled.** The tenant shall continue with the rights and obligations of the parties remaining unchanged.

Tenant's Application for a Monetary Order:

The tenant seeks a monetary order in the sum of \$2727 which is reimbursement of the rent for the months of July, August and September based on the following:

- She testified that the service of the Notice to End Tenancy dated June 30, 2014 amounts to harassment and bullying and has caused her significant stress.
- The landlord has on many occasions entered the rental unit without her permission in her absence.
- The landlord opened the mailbox and put a Notice of Rent Increase where she had no right to do so.
- The landlord breached her privacy when talking to the roommate that she had evicted by providing that person particulars of the tenant's difficulty with other roommates.

The landlord disputes much of the evidence of the tenant and in particular:

- She takes the position that she had the legal right to serve a Notice to End Tenancy on the tenant given the disturbance caused by the eviction of the roommate.

- She denies harassing and bullying the tenant.
- She has seen the tenant twice in the last 6 months and on both occasions the tenant refused to acknowledge her.
- She or her employees have never entered the tenant's suite without her permission unless requested to do so. On one occasion a window cleaner closed the window from the outside.
- She acknowledge putting the Notice of Rent Increase into all tenant's mail slots but disputes the allegations that she is not allowed to do so.
- She did not breach any privacy when dealing with the departing roommate.

Analysis:

I determined the tenant has failed to establish that she is entitled to a monetary order for the following reasons:

- The landlord has a legal right to serve a one month Notice to End Tenancy in a situation where the conduct of the tenant or person permitted on the rental property by the tenant has violated section 47(1)(d). While the landlord was not successful this does not mean this conduct amounts to harassment or bullying.
- The tenant failed to prove the landlord engaged in a pattern of harassment or intimidation. The landlord has had limited contact with the tenant.
- The tenant failed to prove that landlord has entered the tenant's rental unit without the tenant's permission. The tenant has made this allegation but failed to prove sufficient proof in support.
- The placing of the Notice of Rent Increase into the tenant's mailbox is a concern. However, in the tenant failed to present evidence from the post office this is illegal or contrary to their policy. I am not prepared to order compensation where the evidence is insufficient. However, I would urge both parties to talk to the post office and determine their respective rights.
- The tenant failed to prove the landlord breached her privacy by engaging in a conversation with the departing roommate. That person did not attend and testify at the hearing.

For the above reasons I dismissed the tenant's claim for a monetary order.

Tenant's Application for an order authorizing the tenant to change the locks:

I dismissed the tenant's application for an order authorizing the tenant to change the locks as the tenant failed to prove the landlord has gone into her rental unit without her permission.

Landlord's Application for an Order for Possession:

I dismissed the landlord's application for an Order for Possession as I have ordered that the one month Notice to End Tenancy be cancelled.

Landlord's Application for a Monetary Order

The landlord's Application for Dispute Resolution includes a claim for a monetary order in the sum of \$2727 which is the amount the tenant is claiming. There is no legal basis for this claim and accordingly it is dismissed. The landlord failed to identify a claim let alone establish that she is entitled to a monetary order against the tenant. **Accordingly this application including the application to recover the cost of the filing fee is dismissed.**

Summary:

The tenant's application to cancel the Notice to End Tenancy dated June 30, 2014 has been upheld. However, her application for a monetary order and an order authorizing her to change the locks was dismissed. I determined the tenant has been partially successful and is entitled to recover half of the cost of the filing fee or the sum of \$25 such sum may be deducted from future rent.

The landlord's application for an Order for Possession, a monetary order and the cost of the filing fee has been dismissed.

It is further Ordered that this sum be paid forthwith. The Tenant is given a formal Order in the above terms and the respondent must be served with a copy of this Order as soon as possible.

Should the respondent fail to comply with this Order, the Order may be filed in the Small Claims division of the Provincial Court and enforced as an Order of that Court.

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: September 10, 2014

Residential Tenancy Branch

