



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, MNDC, AS, FF

Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution (the “Application”) made by the Tenant to cancel a 1 Month Notice to End Tenancy for Cause (the “Notice”). The Tenant also applied for monetary compensation for damage or loss under the *Residential Tenancy Act* (the “Act”), for permission to assign or sublet the rental suite because the Landlord unreasonably withheld it, and to recover the filing fee for the cost of the Application.

Both parties appeared for the hearing and no issues were raised in relation to the service of the Tenant’s Application and the parties’ documentary evidence served prior to the hearing.

The hearing process was explained and the participants were asked if they had any questions. Both parties provided 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 to me.

I have reviewed the evidence and testimony before me but I only refer to the relevant facts and issues in this decision.

Preliminary Issues

The Tenant appeared five minutes late for the hearing during which time the Landlord made an oral request for an Order of Possession for the rental suite. When the Tenant did appear for the hearing the Tenant was informed of the Landlord’s request.

Section 2.3 of the Rules of Procedures state that, in the course of the dispute resolution proceeding, if the Arbitrator determines that it is appropriate to do so, they may dismiss or adjourn any unrelated disputes contained in a single Application.

As a result, I determined during the hearing that I would not deal with all the dispute issues placed on the Tenant's Application in this hearing. Not all the claims are sufficiently related to the main issue of whether or not the tenancy will continue. Therefore, I only dealt with the Tenant's request to cancel the Notice in this hearing.

Issue(s) to be Decided

- Has the Tenant established that the Notice ought to be cancelled?
- Is the Landlord entitled to an Order of Possession?

Evidence and Analysis

Both parties agreed that this rental of a three bedroom home started in August 6, 2000. Rent for the house was established at \$435.00 payable on the first day of each month. No written tenancy agreement was completed and therefore the term of the tenancy was established on a month to month basis.

The Landlord served the Notice to the Tenant on September 8, 2014 by leaving it with one of the sub-tenants at the rental unit. The Notice which was provided in written evidence shows that the reason for ending the tenancy was because the Tenant sublet the rental unit without his consent and had an effective date of vacancy of October 15, 2014.

The Tenant testified that she knew the Landlord provided her with a document on September 8, 2014 but did not receive the Notice from the sub-tenants until September 9, 2014 and disputed the Notice by making her Application on September 19, 2014.

The time limits imposed by Section 47(4) of the Act to dispute the Notice were explained to the Tenant and the Tenant explained that she had not received the Notice until September 9, 2014 from her sub tenants and therefore had until September 19, 2014 to dispute the Notice as explained by an Information Officer at the Residential Tenancy Branch.

When the Tenant was asked as to why she made her Application outside of the time limits the Tenant submitted that she had a medical condition which stopped her from doing so but submitted that she was still within the time limits. However, no supporting evidence of such a medical condition was provided to support this submission.

I explained the provisions of Section 47(5) of the Act which provide that if a Tenant fails to dispute the Notice within the time limits imposed by the Act, then they have

conclusively presumed to have accepted that the tenancy ends in accordance with the Notice. I also determined that the Tenant did have sufficient time to dispute the Notice and no exceptional circumstances existed that prevented her from making the Application earlier.

However, I allowed the parties to continue to have a discussion in relation to the reasons why the Notice was given. During the discussion, I explained the provisions of Section 34(1) of the Act and Policy Guideline 19 to the Act which provide that a Landlord is not required to give consent to a sublet which does not meet the requirements of the Act.

In this case, the Landlord and Tenant's tenancy was on a month to month basis and while the Tenant provided e-mail evidence where the Landlord asked questions about the new sub-tenants, the Tenant was not able to provide any clear and conclusive evidence that she obtained the Landlord's consent before she continued to sublet the rental suite to the sub-tenants currently residing in the rental suite, or that she had obtained an order from an Arbitrator to do so.

I continued to allow the discussions between the parties and after a number of submissions were made, including a discussion between the parties as to whether a tenancy between them even existed, the parties agreed that the tenancy should end by way of a legally binding order.

The parties had a conversation on the date to end the Tenant's tenancy and after much discussion the Landlord and Tenant agreed on November 30, 2014.

The Tenant had provided the Landlord with rent cheques for the period of October and November, 2014 which the Landlord had returned to the Tenant because they were not of the full amount. The Tenant agreed that there was \$870.00 outstanding in rental arrears and agreed to pay this to the Landlord.

The Landlord also explained that there were outstanding utilities for the tenancy but the Tenant wanted to see the utility bills for this before she agreed to pay them. Therefore, I did not make any findings on unpaid utilities as the Landlord had not made an Application for this amount, which was disputed by the Tenant without seeing the utility bills.

As the Tenant was not successful in cancelling the Notice, I find that the Tenant is not entitled to the recovery of the filing fee.

Conclusion

For the reasons set out above, I dismiss the Tenant's Application to cancel the Notice and issue the Landlord with an Order of Possession effective November 30, 2014 at 1:00 pm. This order must be served onto the Tenant and may be enforced in the Supreme Court as an order of that court.

As the Tenant agreed that there was \$870.00 of outstanding rent, I also grant the Landlord a Monetary Order pursuant to Section 67 of the Act in the amount of **\$870.00**. This order must be served on the Tenant and may then be enforced in the Provincial Court (Small Claims) as an order of that court.

As the Tenant's tenancy will be ending, I dismiss the Tenant's Application for permission to sublet the rental unit and the recovery of the filing fee without leave to re-apply.

The Tenant's Application for monetary compensation is dismissed with leave to re-apply.

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: November 13, 2014

Residential Tenancy Branch

