



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC AS FF

Introduction

This hearing dealt with the tenant's application to cancel a notice to end tenancy for cause, as well as for an order allowing the tenant to assign or sublet the rental unit. The tenant, the landlord and an agent for the landlord participated in the teleconference hearing.

I determined that the issue of the notice to end tenancy took precedence, and only heard evidence on that issue. I will address the remainder of the tenant's application in the conclusion of my decision.

The parties were given full opportunity to give affirmed testimony and present their evidence. I have reviewed all testimony and other evidence. However, in this decision I only describe the evidence relevant to the issues and findings in this matter.

Issue(s) to be Decided

Is the notice to end tenancy valid?

Background and Evidence

On July 29, 2015 the landlord served the tenant with a notice to end tenancy for cause. The notice indicates that the reasons for ending the tenancy are: (1) the tenant is repeatedly late paying rent; and (2) the tenant has assigned or sublet the rental unit without the landlord's written consent.

Landlord's Evidence

The landlord stated that the issue of repeated late payment of rent was nothing serious, two or three times the tenant was a day or two late paying rent, but not on consecutive occasions.

The landlord stated that in July 2015 he went on vacation and appointed an agent while he was away. The landlord stated that when he returned in late July, a person he did not know approached him to ask the location of the laundry room. The person told the landlord that he was the tenant's new subtenant. The landlord stated that the tenant has sublet her unit in the past and she knows the rules. The landlord stated that it is important that he screen any potential subtenants in order to ensure the security and safety of all of the occupants of the building. The landlord stated that the subtenant is still in the rental unit.

The landlord's agent stated that he was only on call for emergencies. He stated that the tenant came to his door and stated she was having a friend stay for a couple of weeks while she was away. The agent stated that the tenant never indicated that she was subletting. The agent stated that he asked the tenant to give him written information that he would pass on to the landlord, but she never did.

Tenant's Response

The tenant stated that she found out on July 16, 2015 that her job was being cut, so she needed to find a roommate to help pay the rent. The tenant stated that she found a roommate and introduced him to the landlord's agent. The tenant stated that she also told the agent that she would also have a friend coming over while she was away. The tenant stated that she did write a letter about her tenant and put it in the landlord's black box near the door.

Analysis

I find that the notice to end tenancy for cause dated July 29, 2015 is not valid.

The landlord stated that the issue of repeated late payment of rent was not serious, and he did not present sufficient evidence to establish that the tenant was late paying rent at least three times in the recent past.

I find that the additional occupant in the rental unit is not a subtenant. A subtenancy can only occur when the original tenant's tenancy agreement is for a fixed term and the

subtenant occupies the rental unit for a term shorter than the original tenant's term. Further, the tenant herself has not vacated the rental unit. Therefore, the additional occupant is only that – an occupant.

As the tenant's application to cancel the notice to end tenancy was successful, she is entitled to recovery of her \$50.00 filing fee, which she may deduct from her next month's rent.

Conclusion

I cancel the notice to end tenancy dated July 29, 2015, with the effect that the tenancy continues until such time as it ends in accordance with the Act.

As the occupant is not a subtenant, I dismiss the tenant's application for an order that the landlord consent to a subtenancy.

The tenant may deduct \$50.00, as a one-time deduction, from her next month's rent.

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 20, 2015

Residential Tenancy Branch

