



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, FF

Introduction

This hearing was convened in response to an application by the Tenant pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

1. An Order cancelling a notice to end tenancy - Section 47; and
2. An Order to recover the filing fee for this application - Section 72.

The Landlord and Tenant were each given full opportunity under oath to be heard, to present evidence and to make submissions.

Issue(s) to be Decided

Is the notice to end tenancy valid?

Is the Tenant entitled to a cancellation of the notice to end tenancy?

Background and Evidence

The tenancy stated on July 15, 2015 on a fixed term to end January 15, 2016. Rent of \$1,300.00 is payable monthly on the first day of each month. On September 12, 2015 the Tenant received a one month notice to end tenancy for cause (the “Notice”). The reason indicated for ending the tenancy as indicated on the Notice is that the Tenant has assigned or sublet the rental unit without the Landlord’s permission.

The Landlord states that another person has moved into the unit and share rent with the Tenant. The Landlord states that this is a sublet and that no permission was granted for this sublet. The Landlord states that if this person is a roommate the Landlord should

be informed. The Tenant states that this person is her best friend, co-worker and godparent to the Tenant's child and that this person resides and pays rent at another residence. The Tenant states that her husband recently dies and this person also has been helping the Tenant with her rent. The Tenant states that this person has never lived with the Tenant, that the Tenant has never moved out of the unit and that the Tenant has never allowed this person to take over the unit for any period.

Analysis

Section 47 of the Act provides that a landlord may end a tenancy where the tenant purports to assign the tenancy agreement or sublet the rental unit without first obtaining the landlord's written consent. Residential Tenancy Policy guideline #13 provides that where a tenant allows a person who is not a tenant to move into the premises and share the rent, the new occupant has no rights or obligations under the tenancy agreement, unless all parties agree to enter into a tenancy agreement to include the new occupant as a tenant. Residential Tenancy Policy Guideline #19 sets out policy statements in relation to subletting and assignments. Taking the two policy guidelines together an assignment occurs when the entire unit is given to another person and the original tenant moves out permanently. A sublet occurs when the entire unit is given to another person but only for a period of time after which the original tenant moves back in.

In the situation at hand, the Tenant has remained in the unit and has paid the rent to the Landlord. Even if the person moved in and was sharing rent given the policy guidelines above I find that this person is not a subletting tenant. All that the Landlord has possibly shown is that the person is a guest, occupant or roommate without rights or obligations under the tenancy agreement. As the Landlord has not provided any evidence to substantiate that a sublet or assignment has occurred I find that the Notice is not valid. The Tenant is entitled to a cancellation of the Notice and the tenancy continues. As the Tenant has been successful with its application I find that the Tenant is entitled to recovery of the **\$50.00** filing fee and the Tenant may deduct this amount from future rent payable in full satisfaction of this claim.

Conclusion

The Notice is cancelled and of no effect. The Tenant may deduct \$50.00 from future rent payable.

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 20, 2015

Residential Tenancy Branch

