



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Parkside Property Management Ltd.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes DRI, CNC, FF

Introduction

This hearing was convened by way of conference call concerning an application made by the tenant disputing an additional rent increase, for an order cancelling a notice to end the tenancy for cause, and to recover the filing fee from the landlord for the cost of the application.

The tenant and an agent for the landlord company attended the call and each gave affirmed testimony and provided evidentiary material in advance of the hearing. The landlord's agent also called one witness who gave affirmed testimony. The parties were given the opportunity to question each other and the witness with respect to the testimony and evidence provided, all of which has been reviewed and is considered in this Decision.

Issue(s) to be Decided

- Has the tenant established that rent has been increased contrary to the *Residential Tenancy Act*?
- Has the landlord established that the notice to end the tenancy for cause was issued in accordance with the *Residential Tenancy Act*?

Background and Evidence

The landlord's agent testified that a tenancy had existed between the landlord and a different tenant who had had several roommates from time-to-time. That tenancy began on September 1, 2013 and in late 2014 that tenant left 6 months of post-dated rent cheques with the landlord and said he was going to Australia on a long holiday. He never returned, vacating the rental unit without notice, leaving this tenant resident in the rental unit, and the rent cheques ran out. The landlord's agent does not know when this tenant moved in, however it was sometime in 2014 and still resides in the rental unit. The rental unit is one of 47 suites in the complex.

In June, 2015 the resident manager went into the rental unit to examine the stove and saw damage to the suite and reported that to the landlord's agent who looked up the account and had no record of the tenant. The tenant who went to Australia was on the lease so the landlord's agent asked the resident manager to contact him, but she wasn't sure when he would be returning from Australia. The landlord's agent discovered he had no intention of coming back and the landlord had unregistered tenants with no written lease.

The tenant was told that the lease with the fellow who went to Australia was discontinued. The tenant agreed to a new lease with a roommate, who is also resident in the rental unit. Rent was negotiated between the parties at \$1,255.00 per month instead of the market rate of \$1,420.00 per month. The tenant's roommate signed the tenancy agreement on August 31, 2015 but the tenant refused to sign it.

The tenancy agreement also provides for a security deposit in the amount of \$627.50 and the tenant said he couldn't pay it until September 18, 2015 and the landlord agreed. The tenant didn't pay it, and the landlord issued a 1 Month Notice to End Tenancy for Cause. A copy of the notice has been provided and it is dated October 30, 2015 and contains an effective date of vacancy of November 30, 2015. The reason for issuing it is: Residential Tenancy Act only: security or pet damage deposit was not paid within 30 days as required by the tenancy agreement.

The landlord's agent further testified that the original security deposit the landlord received was \$520.00 which was transferred to the lease the landlord had with the tenant who went to Australia. He has not claimed the security deposit and that is a matter that the landlord will deal with due to damages left in the rental unit after he departed.

Text messages provided show that the tenant intended to pay \$627.50, sign a lease, and there was never any dispute about it until the tenant filed this application for dispute resolution.

The landlord's agent orally requested an Order of Possession.

The landlord's witness testified that she is the resident manager of the rental complex. The tenant had asked the witness to complete some repairs and to make a new lease, saying he wanted the lease in his name and wanted control. The witness told the tenant that they had to do a walk-through, and through some negotiating, the parties agreed to \$1,255.00 per month for rent.

The tenant kept promising to pay the security deposit but didn't, then refused to sign the lease, but his roommate signed it. The witness served the tenant personally with the 1 Month Notice to End Tenancy for Cause on October 30, 2015.

The witness further testified that she spoke to some neighbours and has confirmed that the tenant has been resident in the rental unit since 2014. Copies of letters from 2 neighbouring tenants have been provided, and the witness testified that her husband had dealings with the tenant in the summer of 2014. The witness further testified that she had a conversation with the tenant on September 1, 2015 and advised the tenant that there was no information about him living there. At no time did the tenant advise that he had given anyone a security deposit, and the witness was surprised when she read that in the Tenant's Application for Dispute Resolution.

The tenant testified that he moved into the rental unit on April 1, 2015 with the tenant who had gone to Australia, and paid that person \$310.00 which was half of the security deposit, and also paid half of the rent.

The tenant does not agree that he was informed that he needed to sign a tenancy agreement and when it was presented to him, he didn't agree with it. The lease showed that rent would be increased to \$1,255.00 and required the tenant to pay a \$627.50 security deposit. When the tenant questioned it, the resident manager said that the previous tenancy had ended in August, 2015. The tenant agrees to pay a portion of the security deposit, but has already paid \$310.00 of it.

Analysis

Where a tenant disputes a notice to end a tenancy given by a landlord, the onus is on the landlord to establish that it was given in accordance with the *Residential Tenancy Act*, which can include the reason(s) for issuing it. I have reviewed the notice and I find that it is in the approved form and contains information required by the *Act*. The reason for issuing it is in dispute.

In this case, the parties agree that the landlord had a tenancy agreement with the fellow who went to Australia, and the landlord agreed for that tenant to have roommates. The tenant in this dispute is a subletting tenant, which is a tenancy agreement wherein the first tenant becomes the landlord of the second tenant.

The tenant in this dispute may very well have paid a security deposit to the subletting landlord, but there is no evidence before me to satisfy me that any of it went to the landlord. The landlord discovered the tenant in the rental unit, who requested a written

agreement and the landlord had the right to request a security deposit. The tenant refused or neglected to pay it, and therefore, I find that the landlord had cause to issue the notice.

With respect to the rent increase, I am not satisfied that the tenant has established that rent has been raised. The subletting landlord moved out, and the landlord has a right to re-rent with a new tenancy agreement.

During the course of the hearing the landlord's agent orally requested an Order of Possession and where a landlord does so at a hearing dealing with a tenant's application to cancel a notice to end the tenancy, I must grant one. The effective date of vacancy has already passed, and I grant an Order of Possession in favour of the landlord on 2 days notice to the tenant.

Conclusion

For the reasons set out above, the tenant's application is hereby dismissed in its entirety without leave to reapply.

I hereby grant an Order of Possession in favour of the landlord on 2 days notice to the tenant.

This order is final and binding and may be enforced.

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: December 01, 2015

Residential Tenancy Branch

