



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding AZIZAMALCO HOLDINGS CO. D.B.A. CONN LODGE APARTMENTS
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC, OLC, FF

Introduction

This hearing dealt with an application by the tenant seeking to have a One Month Notice to End Tenancy for Cause set aside, an order to have the landlord comply with the Act, regulation or tenancy agreement and to recover her filing fee for this application. The tenant acknowledged that she received the landlords' evidence. I find that the tenant has been duly served of all documentary evidence that the landlord wishes to rely on in accordance with the Act and the Rules of Procedure.

The landlords counsel advised that the tenant had not submitted any documentary evidence for this hearing to his client. The Branch file was also absent any documentation from the tenant. The tenant stated that she wasn't aware of this hearing until January 15, 2016. The tenant stated that she was assured by the Branch that her documentary evidence would be "re-associated" with this file as she's had other hearings in regards to this tenancy. The tenant requested this matter be adjourned.

I did not find the tenants explanation compelling. The tenant is the applicant in this matter and was fully aware of the date of this hearing. I find the tenants submission that she was unaware of today's date illogical and without merit. In addition, the tenant was very vague in her explanation of the arrangements she made with the Branch to have her documentary evidence "re-associated" with this file. I find that the tenant has not complied with Rule of Procedure 3.5 and 3.14, and after considering Rule 3.17, her request to adjourn the matter to submit the documentation is denied. The tenants' oral testimony will be considered when making a decision. The hearing proceeded and completed on that basis.

Preliminary Matter

Both parties advised that they have an ongoing matter in the Supreme Court in relation to monetary claims made by the landlord in relation to misappropriated funds that they allege the tenant has obtained in the course of her employment. As those matters are before the Supreme Court, I therefore cannot make any findings in that regard in accordance with Section 58(2) (c) of the Act.

Issues to be Decided

Is the tenant entitled to have the One Month Notice to End Tenancy for Cause set aside?
Is the tenant entitled to have an order to have the landlord comply with the Act, regulation or tenancy agreement?
Is the tenant entitled to the recovery of the filing fee for this application?

Background and Evidence

Counsel for the landlord gave the following submissions. The tenant was hired to be the resident manager and to occupy suite #209 as part of her employment. Counsel submits that the employment began on or about September 1, 2013. Rent in the amount of \$850.00 is payable in advance on the first day of each month. Counsel submits that the tenant was given a \$500.00 per month discount on her rent as part of her employment. Counsel submits that due to the tenants' poor performance as the resident manager, the landlord terminated the employment on November 27, 2015.

Counsel submits that since her employment has been terminated and that she is occupying the resident managers' suite, she needs to vacate the unit. Counsel submits that suite #209 has always been the managers' suite and that the incoming manager is waiting to take possession of it. Counsel submits that the tenant has tried to convince the landlord that suite #410 was used as the managers' suite. Counsel submits that the tenant has been subletting that unit out to as many as four people at any given time for \$1900.00 and has retained the profits.

Counsel submits that the tenant managed the building as she saw fit and not as instructed by the landlord. Counsel submits that the tenant misappropriated funds that belonged to the landlord, sub-let units despite the landlords instructions not to, was allowing tenants to advertise the units on Airbnb, and had extremely poor accounting records of expenditures and income.

Counsel submits that because of those issues, the landlord issued the One Month Notice to End Tenancy for Cause on the same day that they terminated the tenants' employment, November 27, 2015 on the following grounds:

1. The tenant or a person permitted on the residential property by the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property.
2. The tenant or a person permitted on the residential property by the tenant has seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant.
3. The tenant or a person permitted on the residential property by the tenant has put the landlord's property at significant risk.
4. The tenant has engaged in illegal activity that has caused or is likely to cause damage to the landlord's property.

5. The tenant has adversely affected or is likely to adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant of the residential property.
6. The tenant has jeopardized or is likely to jeopardize a lawful right or interest of another occupant or the landlord;
7. The tenant has failed to comply with a material term, and has not corrected the situation within a reasonable time after the landlord gives written notice to do so;
8. 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]*;
9. The tenant knowingly gives false information about the residential property to a prospective tenant or purchaser viewing the residential property.

Counsel submits that the landlord is entitled to an order of possession as the applicant remains in the managers' suite despite all of the Sections of the Act that she has breached.

The tenant gave the following testimony. The tenant stated that she is looking forward to explaining herself in the Supreme Court and that the matter will be resolved in her favour. The tenant stated that she went above and beyond in her role as resident manager in attempts to bringing up the building from the poor and mismanaged state that it was in when she took over. The tenant stated that the incoming manager doesn't have to reside in suite #209 as there are other units that come available on a regular basis. The tenant stated that she used suite #410 as the managers' suite and that she has already given it up as an act of good faith.

The tenant stated that she believes that the new manager will not reside in the building at all. The tenant stated that she has many friends in the building and that her son goes to a nearby school and doesn't want to move him. The tenant stated that she has not breached any of the rules as a tenant in the building.

Analysis

When a landlord issues a notice under Section 47 of the Act they bear the responsibility in providing sufficient evidence to support the issuance of that notice. Firstly, I must address an issue counsel brought up several times and kept going back to during the hearing. Counsel submits that the tenant is residing in the managers' suite and that since employment has been terminated, she must move out. The tenant stated that suite #410 was the managers' suite.

It is clear to me and I make the following finding that, based on the extensive documentary evidence submitted by the landlord that suite #209 is in fact the managers' suite and was used as such in the course of the tenants' role as the building manager. The tenants own hand writing reflects the tenancy agreement she wrote up with herself to occupy suite #209 and listed it as the "managers' suite". The tenant remained silent and did not dispute the landlords' claim that suite #410 was rented out to others for as much as \$1900.00 per month. However, the One Month Notice to End Tenancy for Cause does not have the ground that deals with the managers' suite "checked off". I address this for the benefit of both parties and for absolute

clarity that the landlord has not issued the notice on that ground, although referred to on several occasions during the hearing; I need not consider it or make a finding at this time.

In careful consideration of the nine grounds that the landlord has issued the notice on, I have reviewed the chain of events that have transpired, the documentation submitted by the landlord and the testimony of both parties. It's clear to me that there are numerous issues between the two parties however; I find that the majority of those issues relate to an employer – employee relationship. The numerous examples the landlords' counsel referred to her actions and alleged indiscretions as an employee are not sufficient reasons for me to terminate the tenancy. The landlord has not satisfied me that there are sufficient grounds to end this tenancy at this time. I hereby set aside the One Month Notice to End Tenancy for Cause dated November 27, 2015.

As the tenant has been successful in her application, she is entitled to the recovery of her \$50.00 filing fee. The tenant is entitled to a one time reduction of \$50.00 from the next rent due.

Conclusion

The notice to end tenancy is set aside. It is of no force or effect. The tenancy continues.

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: February 1, 2016

Residential Tenancy Branch

