



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes cnc, rp, ff

Introduction

The tenant applies for an order cancelling a one month Notice to End Tenancy, given on the basis that the tenant has assigned or sublet the rental unit/site without the landlord's written consent.

Both parties attended and were heard at the hearing. There are no issues as to service of any documents.

The tenant confirmed this was the most important issue she wanted dealt with at this hearing, but there are other claims listed by the tenant also. One of the objectives of the Rules of Procedure for hearings of this nature is to ensure a consistent, efficient and just process for resolving disputes (Rule 1.3). It is not possible within this context to deal with an array of issues of concern to the tenant in one short hearing. Accordingly, hearings are generally limited to issues that are related in fact and law. In this case the tenant's request for an order for repairs is not related to the one month Notice given by the landlord. That further claim is therefore dismissed pursuant to Rule 2.3, with liberty to re-apply.

Issues to Be Decided

Is the Notice to End Tenancy effective to end this tenancy, and entitle the landlord to an Order of Possession, or should the Notice be cancelled, and the tenancy continue?

Background and Evidence

The facts are not in dispute, and are straight-forward. As previously found by the arbitrator in decision file 838370, and as confirmed in testimony by both parties, a one year fixed term tenancy began on July 17, 2014. Effective July 17, 2015, the tenancy continued on a month-to-month basis. The currently monthly rent is \$3,075.00 due on the 2nd day of each month. Although not provided for in the written tenancy agreement, the landlords initially verbally consented to the tenant subletting the premises. The landlord no longer consent to any subletting or assigning of the tenancy.

The landlords discovered that the tenant was advertising for subtenants, and on January 28, 2016 served the tenant with a one month Notice to End Tenancy (dated January 27, 2016) on the ground the tenant had assigned or sublet the premises without the landlord's written consent.

The tenant testified that she has not actually sublet or assigned at the relevant times, she has only explored that possibility by way of advertising, with a view to attracting a potential subtenant, and presenting the relevant qualifications to the landlord for written approval.

Analysis

Section 34(1) of the Residential Tenancy Act very clearly prohibits the tenant from assigning her tenancy agreement or subletting her rental unit, unless she has the landlord's written consent. In this case the written tenancy agreement does not permit an assignment or a subletting, and the landlord has made it very clear they have no intention of providing their written consent.

Nevertheless, there is a distinction between a tenant taking preliminary steps such as advertising for a subtenant, and actually subletting the premises. The Residential Tenancy Act does not prevent a tenant from advertising, and then seeking permission for a potential sublet, even in cases where the landlord has adamantly refused to entertain any subletting. In the absence of any proof of an actual sublet or assignment, such as agreement for same being entered into between the tenant and a subtenant, or evidence that a subtenant in fact took up occupancy in the premises, I find that the landlord has not established cause to end the tenancy, as no actual subtenancy or assignment has in fact occurred.

The one month Notice dated January 27, 2016 is therefore cancelled, and the tenancy continues. As the tenant is successful with her claim, I order that she recover her \$100.00 filing fee from the landlord. The landlord may pay this sum directly to the tenant, or alternatively the tenant may deduct this sum from a future rental payment.

Conclusion

The one month Notice is cancelled, and the tenancy continues.
The landlord must pay the tenant the sum of \$100.00, as recovery of her filing fee.

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: March 23, 2016

Residential Tenancy Branch