



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, FF, O (Tenants' Application)
 OPC, OPB, MNDC, MNSD, FF (Landlord's Application)

Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution (the "Application") made by both the Tenants on May 27, 2016 and by the Landlord on June 1, 2016.

The Tenants applied to cancel a 1 Month Notice to End Tenancy for Cause (the "Notice"); to recover the filing fee from the Landlord; and for "Other" undisclosed issues. The Landlord applied for an Order of Possession based on the Notice and for a breach of the fixed term tenancy agreement. The Landlord also applied for monetary compensation for damage or loss under the *Residential Tenancy Act* (the "Act"), to keep the Tenants' security deposit, and to recover the filing fee from the Tenants.

The Tenants, the Landlord, and an advocate for the Landlord appeared for the hearing. However, only the female Tenant and the Landlord provided affirmed testimony during the hearing. The Landlord's advocate made submissions during the hearing.

The parties confirmed receipt of each other's Application. The Tenant confirmed receipt of the Landlord's documentary evidence served prior to the hearing and confirmed that they had not provided any documentary evidence prior to the hearing.

The hearing process was explained to the parties and they had no questions about the proceedings. Both parties were given a full opportunity to present their evidence, make submissions to me, and cross examine the other party on the evidence provided during the two hour hearing. I have considered the evidence provided by the parties in this case but I have only documented that evidence which I relied upon to make findings in this decision.

Rule 2.3 of the Residential Tenancy Branch Rules of Procedure states that an Arbitrator may use their discretion to dismiss unrelated claims with or without leave to re-apply. At the start of the hearing, I determined that in this hearing I would only deal with the issue

of the end of tenancy with respect to the Notice and the ending of the fixed term tenancy. I determined that the Landlord's monetary Application was for loss of rent for the rental unit and the basement unit and these were not sufficiently related to the Notice which was for cause. However, the Landlord's monetary claim is dismissed with leave to re-apply.

Issue(s) to be Decided

- Has the Landlord proved that the tenancy should end prior to the fixed term of August 31, 2016?
- Should the Notice be canceled?
- Is the Landlord entitled to an Order of Possession?

Background and Evidence

Both parties agreed that the tenancy started in May 2014. A number of written tenancy agreements were signed by the parties, the latest one which was signed on April 20, 2016. That agreement details a start date of May 1, 2016 for a fixed term of four months which is due to end on August 31, 2016. The agreement shows that after this time period the Tenants are required to vacate the rental unit and the tenancy ends.

Rent under this agreement is payable by the Tenants on the first day of each month in the amount of \$2,250.00. The rental unit comprises of the first two levels of a residential home. The residential property also comprises a basement suite which is rented out separately to this tenancy. The Tenants paid the Landlord \$1,100.00 as a security deposit in May 2014 and a \$1,100.00 pet damage deposit in November 2014.

The Landlord explained that the Tenants' tenancy was due to expire at the end of August 2016 but that she wanted to end the tenancy earlier through the Notice. The Tenants explained that they are going to be vacating the rental unit at the end of the fixed term tenancy but did not want to vacate earlier pursuant to the vacancy date of the Notice. The parties were unable to reach agreement in terms of mutually ending the tenancy during the hearing. As a result, I asked the Landlord to present her evidence in relation to the reasons why the Notice had been served to the Tenants.

The Notice dated May 18, 2016 was provided into evidence and was served to the Tenants on May 21, 2016. It details an end of tenancy date of June 30, 2016. The Tenants acknowledged receipt of the Notice for this date and applied to dispute the Notice on May 27, 2016. The reasons for ending the tenancy on the Notice are as follows:

- Tenant has allowed an unreasonable number of occupants in the rental unit;
- Tenant or a person permitted on the property by the tenant has:
 - significantly interfered with or unreasonably disturbed another occupant or the landlord,
 - seriously jeopardized the health or safety or lawful right of another occupant or the landlord; and
- Tenant has breached a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so;
- Tenant has assigned or sublet the rental unit without the Landlord's written consent.

The Landlord testified that in October 2015, she conducted an inspection of the rental unit as she was a distant Landlord when she noticed that the Tenants were subletting the rental unit to an unknown person. The Landlord testified that she confronted the Tenant about this who informed her that she had sublet part of the rental unit to a young woman for \$500.00 per month. The Landlord testified that she informed the Tenant that this was not acceptable as she does not know who this young woman is and had not given written consent for this to occur.

The Landlord testified that she also noticed that there was a camper van that was parked in the field adjacent to the residential home which the Tenants did not have access to as this area was specifically excluded in the signed tenancy agreement. The Landlord testified that the camper van belonged to Tenant's uncle who was residing in it and using power from the house to operate it.

The Landlord testified that on October 13, 2015 she sent the Tenant an email informing her that the Tenant had sublet a room in the rental unit without the Landlord being able to do any type of reference check or knowing anything about it. In the same email the Landlord requested the Tenant to have the camper van removed as the Tenant or her uncle had no authority to be there or use power from the residential home. The Landlord then referred me to another email which she sent to the Tenant on October 19, 2015 reminding her that the camper van was still being stored on the residential property and that this needs to be removed.

The Landlord testified that on May 15, 2016 she received a letter from the basement renters informing the Landlord that they were ending their tenancy. In this letter the basement renters summarised the issues they were having with the Tenants since the basement renters had moved in on September 1, 2015. The letter stated that the Tenants had the young lady living in the rental unit who was an inconvenience to them

and did not vacate the residential property until February 2016. The Landlord submitted that this was clear evidence that the Tenants had sublet the rental unit to the young lady from October 2015 to February 2016 despite being warned not to do this.

In the same letter the basement renters write that in addition, the Tenants had group of people staying in the rental unit while the Tenants were away and that these people and their dogs caused excessive noise disturbances late into the night during their few weeks of stay. The letter continues to state that after the Tenants returned from being away they came back with their daughter who was trying to escape from a violent drug dealer which made the basement renters fear for their safety.

The letter continues to state that the Tenants then had a family move in with them as they had a moving truck with them. When the basement renters confronted the Tenants about this, the Tenants informed them that they would be staying with the Tenants until the end of the lease. The basement renters write that they were disturbed by noise and parking restrictions as a result of this family moving in. The basement renters conclude the letter writing that due to the Tenants' behaviour they are ending their tenancy in June 2016.

The Landlord's advocate submitted that the Tenants had sublet the rental unit and that this was contrary to the signed tenancy agreement and to the Act. The Landlord's advocate submitted that after the Tenant had been sent the email about the young woman subletting the rental unit, the Tenant did not stop until several months later.

The Landlord stated that she did not realise that all of these issues were going on until the basement renters had informed her of these issues in their May 15, 2016 letter and that she had spoken with the basement renters and had asked them to call the police if they feared for their safety in the interim time of their tenancy.

The Tenant denied the Landlord's testimony and allegations and disputes the reasons on the Notice. The Tenant explained that the young woman was a family friend who was coming to visit her and help her out and that the initial intention was that she was going to contribute to rent. However, when the young woman visited, no rent was taken from her. The Tenant explained that she was away for four days from the rental unit and during that time she allowed guests to stay in the rental unit. However, the guests did not create noise and disturbance. The Tenant stated that when she returned, neither the basement renters nor the Landlord brought any of these allegations to her attention.

The Tenant stated that her uncle was not camped out in the camper van in the field and that the Landlord had allowed them a shed area for the storage of property which is

where her uncle's camper van was parked. The Tenant testified that the camper van has now been removed.

The Tenant stated that the family that came with the U-Haul truck were friends who had come to visit them on their way to their new home as they were moving house. The Tenant disputed the Landlord's and the basement renter's letter that their daughter posed a danger to them.

When the Tenant was asked whether she had received the two emails from the Landlord in October 2015, she replied that she did not check her email and was not computer literate. The Landlord confirmed that she had not received a response from the Tenant to her emails as she had requested the Tenant to do so, but pointed me to the signed tenancy agreement that stated that the Tenant was agreeable to receiving documents by email.

The Tenant concluded her testimony by submitting that the Landlord had forced the basement renters to write the letter as a means to have the Tenants evicted. The Tenant submitted that the basement renters vacated the rental unit because the Landlord was continually harassing them to gather evidence of the Tenants' activity.

Analysis

In relation to the form and content of the Notice dated May 18, 2016, I find the Notice complied with the requirements of Section 52 of the Act and that it was served to the Tenants pursuant to Section 88(a) of the Act on May 21, 2016. The Tenants confirmed receipt of the Notice on May 21, 2016 and applied to dispute the Notice on May 27, 2016. Therefore, I find that the Tenants made the Application to dispute the Notice within the 10 day time limit stipulated by Section 47(4) of the Act.

When a landlord issues a tenant with a Notice and it is then subsequently disputed, the landlord bears the burden of proving the reasons on the balance of probabilities. Therefore, I must determine if the Landlord has met the burden by providing sufficient evidence to prove the reasons elected on the Notice.

Firstly, I turn to the fact that it appears that the Landlord served the Tenants with the Notice on the sole basis of the allegations made by the basement renters in their two page letter dated May 15, 2016. Prior to this it appears that there were no issues between the Landlord and the Tenants that warranted the ending of the tenancy with a notice to end tenancy. This is because the parties had agreed to enter into another fixed term tenancy with each other after a short period prior to the Landlord receiving the

letter from the basement renters. Therefore, I am only able to conclude that the impetus for the Tenants being issued with the Notice was based on the basement renters letter which detailed allegations of past infractions during the tenancy which I find are no longer in existence. The basement renters were not made available for this hearing to give direct testimony on the allegations they made in their letter and be subject to cross examination. Neither did the basement renters or the Landlord provide supporting evidence of their allegations, such as audio or photographic evidence, which would have been imperative evidence to corroborate the allegations made in the letter. Therefore, I am only able to conclude that the Landlord seeks to rely on this hearsay evidence which I have placed little evidentiary value on.

I find that there is insufficient evidence to show that at the time the Landlord served the Tenants with the Notice that the activities alleged by the basement renters were ongoing and continuing. I find that on receiving such a serious letter from the basement renters, the Landlord had a duty to investigate and verify the allegations made by the basement renters and thus gather further evidence.

I find the Landlord failed to provide sufficient evidence to show that the Tenants had an unreasonable number of occupants in the rental unit. Rather, I find the parties' evidence only shows that the Tenants had guests come to visit them. In this respect, section 9 of the Residential Tenancy Branch Regulations prevents a landlord from stopping a tenant from having guests under reasonable circumstances. I find that the Landlord has failed to provide sufficient evidence to show that the parties visiting them during this tenancy went beyond their capacity as a guest.

I also find that there is insufficient evidence in this case to show the Tenants sublet their rental unit. The Landlord failed to provide evidence of rent payments made to the Tenants or that a tenancy had been entered into between the Tenants and another party that would point to a sublet situation. I find the basement renters' unsubstantiated allegations are not sufficient to convince me that the Tenants sublet the rental unit until February 2016 and question why the basement renters did not bring this to the attention of the Landlord at the time it was alleged to have been going on.

I also find that the Landlord failed to provide sufficient evidence to show that the Tenants or occupants of the rental unit had jeopardized the safety of the basement renters and had disturbed them. In this respect, I find the Landlord seeks to rely on the basement renters' letter as evidence of this which I find to be very weak. I find that if the basement renters feared for their safety that much, then this would have warranted further action which would have likely comprised of contact with the police, and at the very least putting the Landlord on notice of this alleged serious issue.

With respect to the breach of a material term of the tenancy agreement, this reason requires a landlord to put the tenant on notice of a breach through a written notice. Section 88 of the Act provides for methods of serving a party with such a notice and email is not one of them. Although I find the Landlord engaged in the good practice of documenting that email was an acceptable form of communication between the parties, there is still a requirement for a party to provide that a notice has been received when using a method outside of the Act. Therefore, in this case, the Landlord would have been required to prove that email communication was the normal routine form of communication between them and that the Tenant received the email by way of response. This evidence is not before me and would have likely rebutted the Tenant's claim that she did not receive the email sent to her in October 2015. However, in any case, even if I accept that the Tenants had been put on written notice of their alleged breach of the tenancy to sublet the rental unit, there is not sufficient evidence before me that the alleged breach continued. Again, the basement renters' allegation that the young lady did not move out until February 2016 is not sufficient for me to make this conclusion.

Furthermore, the Act provides a landlord with the ability to complete monthly inspections of the rental unit. Therefore, irrespective of whether a landlord is a distant landlord, they still have an obligation to conduct monthly inspections. This obligation would have been more imperative if it had come to the Landlord's notice in October 2015 that the Tenants were subletting or using part of the property that was outside the jurisdiction of the tenancy agreement. If the Landlord had done so, then it would have been an opportunity for the Landlord to obtain direct evidence of any continued breaches without having to rely on hearsay evidence from the basement renters many months later.

I also find that there is not sufficient evidence before me to find the Tenants alleged breaches were the cause of the basement renters leaving their tenancy. The Tenants disputed this claim during the hearing. Therefore, in the absence of other corroborative evidence I find that the basement renters' written submissions alone are not sufficient to prove this on the balance of probabilities.

Based on the foregoing, I find the Landlord has not met the burden to prove the Notice. Therefore, I grant the Tenants' Application to cancel the Notice and dismiss the Landlord's request to end the tenancy pursuant to the Notice. As the Tenants have been successful in cancelling the Notice, the Tenants may recover the \$100.00 filing fee. Pursuant to Section 72(2) (a) of the Act, the Tenants may achieve this relief by deducting \$100.00 from a next installment of rent. The Tenants may want to attach a copy of this decision when making the reduced rent payment to the Landlord.

With respect to the Landlord's Application to end the tenancy pursuant to the fixed term tenancy agreement, I grant the Landlord an Order of Possession to end the fixed term tenancy pursuant to Section 55(2) (c) of the Act. I grant this order in the case the Tenants fail to vacate the rental unit pursuant to the tenancy agreement.

As the Landlord has been unsuccessful in proving the Notice and the Tenants have not breached the fixed term end of tenancy date at this moment in time, I dismiss the Landlord's Application to recover the filing fee. The Landlord's monetary claim was not heard in this hearing and is therefore dismissed with leave to re-apply.

Conclusion

The Tenants' request to cancel the Notice is granted. The tenancy will continue until it is either ended in accordance with the Act or on August 31, 2016. The Landlord is granted an Order of Possession based on the end of the fixed term tenancy. The Tenants are still responsible to pay rent for the duration of the tenancy.

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: July 05, 2016

Residential Tenancy Branch