



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: CNC, MNR, FF

Introduction

This hearing dealt with an application by the tenant for an order to set aside a notice to end tenancy for cause and for a monetary order for compensation for loss of quiet enjoyment and for the recovery of the filing fee.

Both parties attended the hearing and had opportunity to be heard. The parties acknowledged receipt of evidence submitted by the other and gave affirmed testimony.

Issue to be Decided

Does the landlord have grounds to end this tenancy? Is the tenant entitled to compensation and to recover the filing fee?

Background and Evidence

The tenancy began in August 2014 for a fixed term of one year which was renewed at the end of the term for a further fixed term of two years with an end date of July 31, 2017. A copy of the tenancy agreement was filed into evidence. It is not clear whether the tenant has to move out at the end of the tenancy in July 2017 or whether the tenancy continues on a month to month basis. There are no hand written initials in the box that confirms that the tenant will move out at the end of the two year fixed term.

In June of 2016, the property was sold and a new landlord took over the existing rental agreement. The monthly rent is \$4,200.00 payable on the first of each month.

The rental unit is a house that has a self-contained furnished suite in the basement. From the start of tenancy, the tenant would rent this suite to travelers and other short term occupants, to help him with rental payments.

The tenant stated that after the new landlord assumed the tenancy, the tenant continued to rent the basement to short term travelers, as he had been doing prior to the sale of the property. The new landlord objected to this practice. On June 14, 2016, the landlord served the tenant with a one month notice to end tenancy for cause. The reason for the notice is that the tenant has assigned or sublet the rental unit without the landlord's written consent. The tenant disputed the notice in a timely manner and made attempts to address all the issues that the landlord raised.

The tenant testified that he made arrangements to get enhanced insurance to cover temporary occupants, obtained information from the City by law officer re compliance with City by laws and asked if he could have a long term occupant/roommate to help with rent, if the landlord did not agree to short term occupants. The tenant stated that his attempts to cooperate with the landlord were all rejected by the landlord.

The landlord stated that he had concerns that the suite was not a legal suite, there would be increased damage to his property from multiple moves in and out and that his insurance would not cover damages resulting from any mishaps created by these temporary occupants of the rental unit.

The tenant stated that he suffered a great deal of angst because he has three children who attend a nearby school and one child has special needs which would make a move far too disruptive for his family. The tenant has applied for compensation in the amount of one month's rent for the loss of his quiet enjoyment of the rental unit.

During the hearing, options were considered to allow the basement to be rented out separately and managed by the landlord with a rent reduction to the tenant. The parties could not come to an agreement on the specifics of this arrangement.

Analysis

In order to support the notice to end tenancy, the landlord must prove that the tenant has sublet or assigned the rental unit without the landlord's consent. *Residential Tenancy Policy Guideline#19* addresses assignments and sublets.

Disputes between tenants and landlords regarding the issue of subletting may arise when the tenant has allowed a roommate to live with them in the rental unit. The tenant, who has a tenancy agreement with the landlord, remains in the rental unit, and rents out a room or space within the rental unit to a third party. However, unless the tenant is acting as agent on behalf of the landlord, if the tenant remains in the rental unit, the definition of landlord in the *Act* does not support a landlord/tenant relationship between the tenant and the third party.

The third party would be considered an occupant/roommate, with no rights or responsibilities under the *Residential Tenancy Act*.

The use of the word 'sublet' can cause confusion because under the Act it refers to the situation where the original tenant moves out of the rental unit and has a subletting agreement with a sub-tenant.

'Sublet' is also used to refer to situations where the tenant remains in the rental unit and rents out space within the unit to others. In determining if a scenario such as this is a sublet as contemplated by the Act, the arbitrator will assess whether or not the relationship between the original tenant and third party constitutes a tenancy agreement and a landlord/tenant relationship.

If there is a landlord/tenant relationship, the provisions of the Act apply to the parties. If there is no landlord/tenant relationship, the Act does not apply. Roommates and landlords may wish to enter into a separate tenancy agreement to establish a landlord/tenant relationship between them or to add the roommate to the existing tenancy agreement in order to provide protection to all parties under the legislation.

In this case the tenant rented out the basement suite without getting the written consent of the landlord. The landlord issued a one month notice to end tenancy for the tenant's failure to obtain the landlord's written consent to "sublet". However I find that since the tenant remained in the rental unit and allowed the occupants/roommates to move in on a temporary arrangement without a formal tenancy agreement, I find that the relationship between the original tenant and the temporary occupant does not constitute a landlord/tenant relationship.

Based on the above, I further find that since the tenant continues to occupy the rental unit while he rents the basement suite to temporary occupants, this rental arrangement is not a sublet as contemplated by the Act. Accordingly, the notice to end tenancy is set aside and the tenancy will continue.

In order to prove an action for a breach of the covenant of quiet enjoyment, the tenant has to show that there has been a substantial interference with the ordinary and lawful enjoyment of the premises, by the landlord's actions that rendered the premises unfit for occupancy.

With regard to the tenant's monetary claim for compensation for the loss of quiet enjoyment, I have reviewed the submissions of both parties and I find that the relationship is stressful on both parties for different reasons.

Other than the understandable angst and stress which accompanies a state of disagreement and uncertainty, the tenant did not provide compelling evidence to support his claim of compensation for the loss of quiet enjoyment and therefore the tenant's claim for compensation is dismissed.

The tenant has proven a portion of his claim and therefore I award him the recovery of the filing fee of \$100.00. The tenant may make a one-time deduction of \$100.00 from a future rent.

Conclusion

The notice to end tenancy is set aside and the tenancy will continue. The tenant may recover his filing fee of \$100.00 from a future rent.

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 29, 2016

Residential Tenancy Branch